

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

-----: :
SONY MUSIC ENTERTAINMENT, et al., :
Plaintiffs, :
-vs- : Case No. 1:18-cv-950
COX COMMUNICATIONS, INC., et al., :
Defendants. :
-----: :

VOLUME 6 (P.M. Portion)

TRIAL TRANSCRIPT

December 9, 2019

Before: Liam O'Grady, USDC Judge

And a Jury

1 APPEARANCES:

2 FOR THE PLAINTIFFS:

MATTHEW J. OPPENHEIM, ESQ.
SCOTT A. ZEBRAK, ESQ.
JEFFREY M. GOULD, ESQ.
MICHAEL J. DRUCKMAN, ESQ.
ANDREW L. GUERRA, ESQ.
LUCY G. NOYOLA, ESQ.
JIA RYU, ESQ.
Oppenheim + Zebrak, LLP
4530 Wisconsin Avenue, N.W.
5th Floor
Washington, D.C. 20015

9 FOR THE DEFENDANTS:

THOMAS M. BUCHANAN, ESQ.
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006-3817
and
SEAN R. ANDERSON, ESQ.
MICHAEL S. ELKIN, ESQ.
THOMAS P. LANE, ESQ.
CESIE C. ALVAREZ, ESQ.
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166-4193
and
JENNIFER A. GOLINVEAUX, ESQ.
THOMAS J. KEARNEY, ESQ.
Winston & Strawn LLP
101 California Street, 35th Floor
San Francisco, CA 94111-5840
and
MICHAEL L. BRODY, ESQ.
Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601
and
DIANA HUGHES LEIDEN, ESQ.
Winston & Strawn LLP
333 South Grand Avenue
Suite 3800
Los Angeles, CA

I N D E X

WITNESSES ON BEHALF OF
THE PLAINTIFFS:

JASON ZABEK (Cont'd. Video Deposition)

Examination by Mr. Oppenheim: Page 1297

Examination by Mr. Elkin: Page 1349

Further Examination by Mr. Oppenheim: Page 1385

BRENT BECK

Direct Examination by Mr. Gould: Page 1389

1 A F T E R N O O N S E S S I O N

2 NOTE: The afternoon portion of the case on
3 December 9, 2019, begins in the absence of the jury as follows:

4 JURY OUT

5 THE COURT: All right. Ready for the jury?

6 MR. OPPENHEIM: Yes. Just one very quick, apparently
7 one of the jurors attempted to talk in the elevator to one of
8 our clients. He didn't respond, but it might be useful to just
9 tell the jury we're not being rude; we're just trying to
02:06:20 10 observe the formalities of the process and --

11 THE COURT: Yeah. Okay. Thank you.

12 MR. OPPENHEIM: Thank you, Your Honor.

13 THE COURT: All right, Joe, let's get our jury.

14 MR. OPPENHEIM: And by the way, I don't think it was
15 substantive at all.

16 THE COURT: Okay.

17 NOTE: At this point, the jury returns to the
18 courtroom; whereupon, the case continues as follows:

19 JURY IN

02:07:13 20 THE COURT: All right. Please have a seat.

21 All right. Let me just remind you-all that, you
22 know, we all use the same elevators, and we, you know, come in
23 and out together at times. And so if somebody doesn't greet
24 you and say hi, it's probably because they're afraid to, which
25 is a good thing.

1 All right. Let's continue our deposition.

2 NOTE: The testimony of JASON ZABEK via video
3 deposition continues to be played into the record as follows:

4 EXAMINATION (Cont'd.)

5 BY MR. OPPENHEIM:

6 Q. Mr. Zabek, I'm going to hand you what was previously
7 marked Plaintiffs' 81, which is an e-mail from Roger Vredenburg
8 to a variety of individuals, yourself included, in May of 2012.
9 Correct?

02:08:15 10 A. Take a look. Okay.

11 Q. So this e-mail exchange begins when Mr. Sikes -- who I
12 think you've previously said was your right-hand guy?

13 A. He was our senior engineer.

14 Q. Okay.

15 -- sending an e-mail out to the abuse group asking
16 for thoughts on the current format of the residual abuse M&P
17 doc, right?

18 A. Yes.

19 Q. And the residual abuse M&P doc would be the policies we
02:09:20 20 looked at earlier, the graduated response policies we looked at
21 earlier?

22 A. The residential abuse, M&P doc, um-hum.

23 Q. And Mr. Vredenburg responded to Mr. Sikes' invitation for
24 a comment, correct?

25 A. He did respond.

1 Q. And in response, Mr. Vredenburg says that: Right now
2 after customers are terminated and reactivated for DMCA, they
3 start all over again in the process (warnings, suspensions,
4 final, termination).

5 Right? He says that?

6 A. He does state that.

7 Q. And then he says: This gives the customer ten chances to
8 share files before they even have to talk to us (404) again.

9 Right?

02:10:05 10 A. That is there.

11 Q. And, and when he says: before they have to talk to us
12 (404) again, that's a reference to being suspended so that they
13 have to call in to the highest level of corporate abuse,
14 correct?

15 A. That is the -- yes, they are speaking of the (404) number.

16 Q. And Mr. Vredenburg doesn't say that he had discretion to
17 terminate when there was a notice after reactivation, right?
18 He, he says that they start the process all over again,
19 correct?

02:10:38 20 A. He does state that.

21 Q. Okay. He says then, suggests that he would like a
22 procedure to be that after the customer is reactivated from a
23 termination and Cox gets further complaints, then the customer
24 is suspended again to the (404) number right away, right?

25 A. He is requesting that.

1 Q. So he's suggesting that you don't start the process all
2 over again with step 1 in the terminate graduated response
3 process, correct?

4 A. He is.

5 Q. Why is it that you would reactivate customers?

6 A. Could be a multitude of reasons. If we found certain
7 things that, you know, proxy servers were on -- again, malware,
8 proxy servers, open WiFi we discover and somebody stealing from
9 them.

02:11:47 10 Q. But you would reactivate without any, without any
11 information that there was malware or proxy servers, correct?

12 A. We would do our research on those. And I can't tell
13 you -- I couldn't speak for every single case. We would want
14 to make sure that we were doing our due diligence, and those
15 are the things that we would look for. I couldn't tell you off
16 the top of my head every single case and why they got
17 reactivated.

18 Q. Mr. Zabek, Cox had a policy that it would blacklist
19 certain vendors from sending infringement notices, correct?

02:12:29 20 A. I don't know policy.

21 Q. So Cox blacklisted certain vendors who were sending
22 infringement notices; is that correct?

23 A. To my recollection, there was only one.

24 Q. And who was that?

25 A. Digital Rights Corp.

1 Q. And you don't recall that there were other vendors?

2 A. I do not recall.

3 Q. What about payartists.com? Does that ring a bell?

4 A. It does, yep.

5 Q. And was payartists.com blacklisted?

6 A. I do not recall that.

7 Q. Is it possible that there were others who were blacklisted
8 and you just don't recall?

9 A. I would say it's possible, but I don't recall.

10 Q. Okay.

11 A. The one that I know of would be Digital Rights.

12 Q. And the blacklisting of vendors is something that was not
13 described in Cox's abuse policies, correct?

14 A. I'm sorry, say that again?

15 Q. Blacklisting was not described anywhere in Cox's abuse
16 policies, correct?

17 A. Correct.

18 Q. So like reactivation, blacklisting was something that
19 occurred by the abuse team but wasn't set forth in the policy,
02:13:50 20 right?

21 A. The abuse team had not blacklisted anyone. That would go
22 to our legal department, and they would make that
23 determination.

24 Q. In addition to reactivation and blacklisting, the other
25 thing that wasn't contained within the graduated response

1 policy was the fact that Cox imposed caps on vendors in terms
2 of the number of notices that Cox would take on a daily basis,
3 correct?

4 A. With certain, yeah, copyright holders, there were caps on
5 those, and it was not documented in the policy.

6 Q. And when you made that decision, you weren't making the
7 decision on the, on the number of notices that Cox would
8 receive based on the number of copyrights the copyright owner
9 held, right?

02:14:43 10 A. Yes, I believe so.

11 Q. The decision to impose caps on rights owners was the
12 result of Cox not wanting to overwhelm the abuse team's ability
13 to handle infringement notices as they came in, right?

14 A. Well, a lot of it with our, with our automation, we were
15 incredibly efficient in getting those notifications out to our
16 customers. By capping certain copyright holders coming in, it
17 was an assistance on help to those customers calling in. We
18 wanted to make sure that we could get to those folks and they
19 weren't just leaving messages and being dropped.

02:15:26 20 Q. So the decision to impose caps was in order to ensure that
21 Cox's abuse team could handle the incoming calls that would
22 result from infringement notices, right?

23 A. To a certain extent, yeah. Yeah.

24 Q. In fact, you're not aware of any rights owners that were
25 not subject to caps, right?

1 A. I don't think I could answer that 100 percent. I'm sure
2 there may be some that we never had to, if it was lower than,
3 than a certain amount, it was just a few coming in. I don't
4 recall if there was any that we did or didn't have.

5 Q. Were there any complainants that you would accept an
6 unlimited number of DMCA complaints from?

7 A. I'm sorry, I can't remember if there was any of those at
8 this time.

9 Q. In fact, you maintained a cap of 200 notices per weekday
02:16:40 10 for most copyright owners, correct?

11 A. The 200 days about, yeah, an average for certain copyright
12 holders, yeah.

13 Q. Put aside the average for a moment.

14 A. Sure.

15 Q. The default number of notices that Cox would receive --
16 was willing to receive from any copyright owner was 200 per
17 weekday, correct?

18 A. Yeah, 200.

19 Q. And, in fact, you would -- any notices that were received
02:17:16 20 over the 200 limit would be closed, correct?

21 A. They would be attached to the account and then closed.

22 Q. And you would do this without even speaking to copyright
23 owners from time to time, correct?

24 A. When a copyright holder had hit a limit, they would get a
25 notification from our systems.

1 Q. Mr. Zabek, I'm handing you what's been marked as
2 Plaintiffs' 269, which includes e-mails back and forth between
3 Brent Beck, you, and others within the abuse department in
4 March of 2010, and you'll see at the beginning of this, there's
5 an e-mail from Brent Beck indicating that -- giving you a
6 heads-up that Starz Media was increasing their volume of
7 notices, right?

8 A. That's what he is stating there.

9 Q. And that at the time that he sent this e-mail, that Starz
02:18:41 10 Media had not been subject to a hard limit or a cap, right?

11 A. That's what he is stating there.

12 Q. And, and you respond to him: Limit them to 200 like
13 everyone else and close the rest. Right?

14 A. That is what's stated there, yes.

15 Q. From time to time, you would then increase the number of
16 notices that you would accept from certain copyright owners,
17 correct?

18 A. I know in some cases, we, we had, when they had reached
19 out to us.

02:19:09 20 Q. And among those you agreed to -- Mr. Zabek, you've been
21 handed what's been marked as Plaintiff's Exhibit 54, previously
22 marked as Plaintiffs' Exhibit 54.

23 This is an e-mail exchange that begins with an e-mail
24 from Matt Carothers on February 19, 2014, right?

25 A. February 2019 -- or, I'm sorry, 2014?

1 Q. February 19, 2014, right.

2 A. Yes, yes.

3 Q. And Mr. Carothers asks Sara -- do you know who Sara is, by
4 the way?

5 A. I do.

6 Q. Who is Sara?

7 A. Sara Roper.

8 Q. And who is Sara Roper?

9 A. At this time, I don't know what she's doing now. I think
02:20:21 10 she's moved on. But at this time, I believe she was part of
11 the CenturyLink abuse department.

12 Q. Okay. So Matt Carothers on February 19, 2014, asks
13 Ms. Roper whether or not she's seen a complaint spike from
14 Digital Rights Corp and what's been done with those complaints,
15 right?

16 A. I believe that's what he's asking at the bottom here.

17 Q. And Mr. Sikes responds: We are limiting each DMCA
18 complainant by e-mail address to 200 per day.

19 Correct?

02:20:57 20 A. That is what Mr. Sikes is stating.

21 Q. And then David -- excuse me -- Ms. Roper responds with a
22 question, to which David Dee at CenturyLink -- which I guess is
23 part of the abuse department --

24 A. Okay.

25 Q. -- said: Wow, you're limiting each complainant e-mail

1 address to 200 per day? Can we do that, Sara? Can you imagine
2 what I could do with the freed-up computing and storage
3 resources?

4 Right?

5 A. That is what David has put down here, yes.

6 Q. Right. And you respond to David, right?

7 A. Yes. Yes.

8 Q. And in response to David's question about whether or not
9 you could limit the number of infringement notices that you
02:21:46 10 would accept, you responded: F the DMCA!!! Ya, we told each
11 copyright holder to limit them or give us money to hire people.

12 Right?

13 A. That's what we had written down, yes.

14 Q. That's what you wrote?

15 A. Correct.

16 Q. And by "F the DMCA," you meant fuck the DMCA, right?

17 A. Yes. There is a little bit more context around that also,
18 too.

19 Q. Please explain.

02:22:20 20 A. Sure. I mean, with every issue that we have coming into
21 abuse, not just DMCA but everything else, and with Digital
22 Rights Corporation calling us on a consistent basis, it was
23 very tough. They had their settlement notifications in there.
24 It was really frustrating the amount that, you know, they were
25 sending us on a basis. They had already sent so many that they

1 had actually slowed down our server.

2 So the frustration grows when we're trying to work
3 with them to get a good amount that comes in and send them to
4 our customers completely, but they were, they were very
5 unwilling to work with us on that, and it's a challenge.

6 For me, it was always with the law allowing a, you
7 know, a threat to a customer will sue you if not, and it just
8 didn't seem right on that. And the frustration keeps growing.
9 So regrettable, but, you know, we said it. Didn't mean we
02:23:20 10 didn't try to do our jobs, though.

11 Q. Mr. Zabek, you didn't say "F Digital Rights Corp," did
12 you?

13 A. No. That was a joke earlier.

14 Q. You said "F the DMCA," right?

15 A. Yes.

16 Q. And you're referring to the copyright law there, right?

17 A. I'm referring to the actual DMCA.

18 Q. What did you understand the DMCA to be?

19 A. The Digital Millennium Copyright Act.

02:23:42 20 Q. And then you said: Ya, we told each copyright holder to
21 limit them or give us money to hire people.

22 Right?

23 A. Um-hum. I did write that.

24 Q. You didn't say we told Digital Rights Corp to limit them
25 or give us money, right?

1 A. Right.

2 Q. So you were talking about each copyright owner --

3 A. Yeah.

4 Q. -- correct?

5 A. In this e-mail, but, again, the context -- I mean, we did
6 not tell every -- we didn't tell copyright holders to give us
7 money and things like that. These were things that we were
8 talking to our friends over in -- another ISP.

9 You know, again, with the "F the DMCA," if they were
02:24:20 10 allowing a blackmail e-mail to come through for a customer
11 without due process, that's -- that was very interesting to
12 see. It was very frustrating --

13 Q. Mr. Zabek, this e-mail -- this e-mail that you're
14 responding to asks you the question about limiting each
15 complainant e-mail address to 200 a day.

16 A. Um-hum.

17 Q. The question you're asked says nothing about Digital
18 Rights Corp, correct?

19 A. Correct.

02:24:44 20 Q. And you're responding to that general question, correct?

21 A. I'm just responding in general.

22 Q. Okay. And you were frustrated at the number of notices
23 that you were receiving at Cox, right?

24 A. Not necessarily the number. There was, of course,
25 definitely a lot. The content of those in this area, where,

1 you know, looking at -- again, telling our customers that you
2 will be terminated unless you pay us an amount of money and
3 then we'll forgive you, and that's where my frustration comes
4 in, where the law didn't really allow that.

5 Q. So, so your testimony today is that the reason you
6 wrote "F the DMCA" is because you were frustrated with the
7 rights owners that were asking to settle with infringers; is
8 that right?

9 A. That it would allow that to happen, yeah. I thought it
02:25:32 10 was odd. It doesn't mean we didn't process those, but it was
11 frustrating.

12 Q. Nothing in your e-mail of February 19, 2014, references
13 that, does it?

14 A. No, not at all. And --

15 Q. Mr. Zabek, the limits that you set or the caps that you
16 set were intended in your mind to make the process fair for
17 everyone, correct?

18 A. The limits?

19 Q. Yes.

02:25:59 20 A. I would try to make sure that we had correct limits for
21 each of the copyright holders they could send in on a regular
22 basis, try and get it fair across the board. However, there's
23 always flexibility, such as in the HBO, we could, you know,
24 increase if they called in and asked.

25 Q. So you were trying to create a fair process?

1 Is it fair that copyright owners get their works
2 distributed without their permission?

3 A. Without their permission? I think they should, should get
4 their permission.

5 Q. So it's not fair, right?

6 A. I would think that someone would get their permission
7 before they're doing it.

8 Q. Is it fair that the copyright owners have to hire a
9 company to monitor peer-to-peer networks and send notices of
02:26:46 10 infringement?

11 A. I really have no opinion on that.

12 Q. Is it fair that Cox gets to decide how much infringement
13 they're willing to address in a given day?

14 A. Well, you know, as we look at these in setting limits for
15 these, these copyright holders, again, we have increased it for
16 other folks when they have asked about it. We were trying to
17 make sure, make sure that we could actually process every
18 single copyright complaint that did come in. But again, if
19 someone wanted to increase their limits, give us a call, and we
02:27:16 20 will talk and see what we can do, as we've done in several
21 cases.

22 Q. But you often refused to increase limits, correct?

23 A. I'm sure there may have been one, maybe two, but I can't
24 characterize that there was a whole bunch we didn't, you know.

25 I'm sure there may have been one, maybe two, but I

1 can't characterize that there was a whole bunch we didn't, you
2 know.

3 Q. If you were always willing to increase the limits, why
4 would you need limits?

5 A. Well, to keep in the amount coming in so we can make sure
6 that we are, again, handling our customers in a proper way and
7 in a quick way also, too. If, if our SLAs would drop down to a
8 24-hour, 12-hour, things like that, we could then start looking
9 at increasing the limits for those copyright holders at that
02:28:10 10 time.

11 Q. Is it fair that Cox decides whether to terminate a
12 customer who repeatedly and systematically violates Cox's AUP?

13 A. Well, it is our network and our acceptable use policy.

14 Q. Is it fair that the entire music industry is permitted to
15 send fewer notices to Cox than HBO, a single television
16 company?

17 A. I'd have to look at what they were sending in to us.
18 Especially if they did feel that they would like that increase,
19 they could give us a call, like HBO did or like IP-Echelon did,
02:28:42 20 and, and we would definitely work with them to bring in more
21 notifications if they were unhappy with that.

22 Q. Isn't it true that the reason you set caps or limits was
23 because ultimately Cox wanted less notices?

24 A. No. We wanted to make sure we were getting to our
25 customers and assisting them in a, in a quick amount of time.

1 We didn't want them sitting on the phone, leaving messages,
2 things like that. When they called, we were trying to get
3 one-call resolution for them.

4 Q. And, in fact, if Cox received -- sent out less notices,
5 that meant that there would be fewer suspensions, right?

6 A. That would be a byproduct.

7 Q. And if there were fewer notices, that meant that there
8 would be less call center volume, right?

9 A. Not necessarily. If we were doing our jobs properly and
02:29:30 10 we had the information within the messages that we had sent our
11 customers that would maybe not even generate a phone call, we
12 would give them tools to, you know, understand what was going
13 on, help those things, and certain customers solved their
14 issues without even calling us, too. So I can't say it would
15 increase or decrease.

16 Just on a number basis, it could definitely increase
17 it, but if we were doing our education portion to the customer
18 correctly, hopefully that would not have them call in and they
19 could handle the issue on their own, at their, at their
02:30:04 20 location.

21 Q. To be clear, is it your testimony here today that it isn't
22 necessarily the case that less notices meant less call center
23 volume?

24 A. Yeah. I mean it's -- it would increase the call volume, I
25 would think, but I can't give you a number where it's

1 exponentially, you know, if we got 400 more in, it was going to
2 be 400 more calls.

3 Q. But you agree that more notices meant more call center
4 volume, right?

5 A. It's absolutely possible.

6 Q. And so by capping the number of notices, that meant less
7 call, call center volume, right?

8 A. Could mean a steady call volume coming in.

9 Q. And less notices also meant fewer terminations, correct?

02:30:41 10 A. No, not necessarily, because the -- when the, the notices
11 came in, we did hold onto those, but you could get less
12 terminations for those, too.

13 Q. Yeah. So you'd end up with less terminations, right?

14 A. It's possible.

15 Q. Right. And if there were less terminations, that would
16 mean that Cox would retain more revenue, right?

17 A. That we would retain those customers and they would, yes,
18 still pay their bills on a monthly basis.

19 Q. In addition -- so we've talked about a number of things
02:31:11 20 already that was not contained within the written graduated
21 response policy, or I think you referred to it as the M&Ps. We
22 talked about auto- -- we talked about reactivations. We talked
23 about caps. We talked about blacklisting. I now want to talk
24 about auto-suspend limits.

25 A. Okay.

1 Q. Do you know what an auto-suspend limit is?

2 A. I've heard -- yeah, I've heard the term. Absolutely.

3 Q. Was an auto-suspend limit the -- a limit on the number of
4 suspensions that Cox would implement in a day?

5 A. Yes, for those. Yes.

6 Q. I'm sorry. I didn't want to cut you off. For those --

7 A. For any abuse issue.

8 Q. Right. So an auto-suspend limit would cap the number of
9 suspensions that Cox would do in a day across all types of
02:32:06 10 abuse, right?

11 A. Yes.

12 Q. And if Cox received an infringement notice that would have
13 normally called for a suspension under the graduated response
14 policy but the auto-suspend limit had been hit, then Cox would
15 just send an e-mail to the customer instead of doing a
16 suspension, right?

17 A. I gotta tell you, I'd have to go back through the
18 procedures. It's been a while since I've even looked at those.
19 I'm sorry.

02:32:38 20 Q. The normal auto-suspend limit was set at 300 suspensions
21 per day, right?

22 A. Okay. The number sounds familiar, but I can't be a
23 hundred percent.

24 Q. Mr. Zabek, you've been handed what's been previously
25 marked as Plaintiffs' 74, which is an e-mail exchange among

1 people in the abuse department in December of 2009, and if
2 we -- if you start at the back of the e-mail exchange --

3 A. Um-hum.

4 Q. -- you'll see Chris Burns is e-mailing Brent Beck and you,
5 and he says: We've been hitting the 300 suspension limit
6 fairly regularly now.

7 Do you see that?

8 A. I do.

9 Q. Does that refresh your recollection that the auto-suspend
02:33:59 10 limit was normally set at 300 suspensions per day?

11 A. Back in 2009, yes. Yes.

12 Q. And that in this e-mail exchange, in fact, Mr. Burns is
13 complaining that there was going to be a decrease in staffing
14 over the next several days?

15 A. Um-hum.

16 Q. And that there was a problem with handling the call
17 volume, and asked whether or not the auto-suspend limit could
18 be reduced to 250 per day, right?

19 A. Um-hum. That's what he is requesting here, yes.

02:34:38 20 Q. And you go ahead and you authorize the auto-suspend limit
21 to be dropped to 250, correct?

22 A. I do.

23 Q. And then in January, you ask whether or not it can be
24 raised back up to 300 again, right?

25 A. Asking Chris Burns, yes. Again, with these, these are

1 auto suspensions. We can still suspend manually as other
2 issues were coming in. Our auto suspension was one thing,
3 again, that was automatic. If a DOS attack came in or anything
4 else, we could actually manually suspend them with these folks,
5 too. So it wasn't just 250 or 300. Those were just the auto
6 suspends. But we did have the ability to do manual
7 suspensions.

8 Q. And --

9 A. So if somebody was attacking the network, you know, from
02:35:47 10 our -- inside of our network, we could take action on those.

11 Q. And even though there was an auto-suspend limit that would
12 have covered all abuse situations, it's your testimony that if
13 there were suspensions that should have occurred for reasons
14 other than copyright infringement, that might still happen?

15 A. It could be for any reason actually. Even as Chris says
16 at the top, some San Diego agents are continued to process past
17 the 250, meaning we were doing manual suspensions for some type
18 of issue that really required it.

19 Q. Are you aware of a single instance where there was a
02:36:19 20 manual suspension of a copyright infringement notice that was
21 over the cap?

22 A. Ten years ago, I could not recall. I'm sorry.

23 Q. Mr. Zabek, you've been handed what's been marked as
24 Plaintiffs' 270, which is Bates labeled COX_SONY_974255 through
25 257, and this is in August of 2000 -- this is an e-mail

1 exchange in August of 2011.

2 A. '11. Wow.

3 Q. Correct?

4 A. Those are the dates on here, yes, August 2011.

5 Q. And this e-mail exchange indicates that you were dropping
6 the auto-suspend limit to 25, correct?

7 A. Let me look through this here.

8 Q. And I'll direct you to what I'm looking at.

9 A. Yeah.

02:37:23 10 Q. Is on the second page, middle of the page.

11 A. Okay.

12 Q. An e-mail from you where you say: Hard times call for
13 drastic measures - drop it to 25.

14 And then you say: Seriously. I was about to say
15 zero and forget the maps issue -- issues, sorry. And then you
16 then correct "maps" as actually MPAA. It was an auto correct.

17 A. Okay. Yeah, so before the auto suspensions. Okay.

18 Q. So this was a situation where in August of 2011, because
19 of an oncoming hurricane, you decreased the auto-suspend limit.
02:38:01 20 You actually ended up decreasing it down to 100, correct?

21 A. Oh, Hurricane Irene had hit several of our markets. Yes,
22 we did lower the automated suspension limit on those to ensure
23 that -- well, goodness, the customers that had been hit by a
24 natural disaster could either talk to or get ahold of their
25 family members, call 911, whatever they, they needed to do.

1 It's kind of a dire straits for them down with Hurricane Irene.

2 And again, on the auto suspensions on this also, too,
3 we were -- we had the ability to do manual suspensions as other
4 tickets and issues came in and just continue those also, too.
5 But we were trying to take a little bit in consideration for
6 the people, the victims in this area.

7 Q. You didn't just auto suspend for the geographies that were
8 hit by Hurricane Irene, did you?

9 A. We were not able to do that. So what we had done is while
02:39:05 10 we had talked to our folks and say, please use your best
11 judgment again down in these areas that have been hit by a
12 hurricane.

13 Q. Over the -- during the period that you were at Cox, did
14 you generally see an increasing number of infringement notices
15 being sent?

16 A. Within abuse? Yeah. You know, as the internet grew, we'd
17 get more challenges out there that would be coming into the
18 company. So yes, increases were part of it.

19 Q. Increase in the number of infringement notices, right?

02:39:36 20 A. Of any notices, abuse, spam, all of it.

21 Q. Including infringement notices?

22 A. Sure.

23 Q. Mr. Zabek, you've been handed what's been marked as
24 Plaintiffs' -- what was previously marked by -- as Plaintiffs'
25 Exhibit 196, which includes e-mails by you in January -- on

1 January 7, 2010, and in the first e-mail, at the bottom, you
2 say: Well, we have hit the 300 auto-suspend limit...in fact,
3 as you saw, I believe it was hit about 9 a.m. this morning and
4 tickets are beginning to fill up as the screenshot shows.

5 Right?

6 A. That is what is stated here.

7 Q. It goes on to say: You may still suspend if the issue is
8 networking impact (DOS attack, etc.) CATS is dropping tickets
9 for DMCA with the note of -- and then it has a note. Right?

02:40:40 10 And then you go on and say: These customers really
11 should be suspended; however, at the rate the queue is filling
12 up, we are going to get really backed up. So if you're working
13 in CATS, go ahead and send a warning letter unless you feel the
14 letter will create more inbound calls.

15 Right?

16 A. Yes.

17 Q. And then you go on and say: You may also focus on other
18 issues than DMCA, as these may just need a reply or manually
19 sent warning letter.

02:41:09 20 Right?

21 A. Yes. I'm sorry, I barely remember this e-mail.

22 Q. I'm handing you what's been marked as Plaintiffs' Exhibit
23 271, which is Bates labeled COX_SONY_00006759, and this has the
24 same first e-mail, and then it has a response from
25 Andrea Dameri, who we previously discussed, right?

1 A. Yes.

2 Q. And, and she worked in the -- with the abuse -- in the
3 abuse group, correct?

4 A. Correct.

5 Q. And she responded that says: Hi, just a personal
6 observation. We have been hitting the limit for the last two
7 or three weeks. It's rare when the limit is not reached by 9
8 or 10 a.m.

9 Right?

02:42:00 10 A. This is what she's stating, yeah.

11 Q. Do you have any reason to doubt what she's saying?

12 A. I do not.

13 Q. So, in fact, you were regularly hitting the auto-suspend
14 limit by 9 or 10 a.m. in the morning, correct?

15 A. According to Andrea Dameri, yes.

16 Q. And in -- turning back to Exhibit 15 -- excuse me --
17 Exhibit 196 for a moment, you indicated that if the customer
18 did not have a Cox.net e-mail address, that the abuse reps
19 should try to get one, right, because that way you could
02:42:52 20 forward it another address and you could send them a thousand
21 warning letters and then suspend them. It does put off the
22 inevitable for a while.

23 Right?

24 A. That is what's stated.

25 Q. So in this back and forth on the issue of the auto-suspend

1 limit, you posited the idea of sending a thousand warning
2 letters and put off the inevitable suspension for a while,
3 right?

4 A. That is the statement there, but sending a thousand
5 warning letters would be a little, a little much.

6 Q. Mr. Zabek, you've been handed what's been marked as
7 Plaintiffs' 272, which is an e-mail exchange Bates labeled
8 COX_SONY_00005516. In this, there's an e-mail -- two e-mails
9 from you. The first is on January 13, 2010, which is shortly
02:43:41 10 after the -- which is the day after the January 12 abuse call
11 meeting that we just discussed. Correct?

12 A. Um-hum.

13 Q. And in this, you are announcing to the abuse group that
14 you've made changes to how CATS and the walled garden
15 functioned in the hope that it will reduce some of the inbound
16 calls. Right?

17 A. Yes. Some of the calls coming into our TOC and call
18 centers.

19 Q. Right. So this is describing that the reason you are
02:44:23 20 making changes to CATS and the walled garden at this point was
21 to reduce inbound calls, correct?

22 A. For these, yes. It would be an assistance.

23 Q. And it describes that customers would be put into a
24 soft-walled garden and would be able to reactivate themselves
25 twice, correct?

1 A. Yeah. In those garden -- in those walled gardens, we
2 would give them pretty much all the information that we would
3 talk to them on the phone in our hopes they could solve their
4 challenge without actually picking up the phone.

5 Q. And, and then you describe that CATS would then ignore all
6 first DMCA complaints and auto close the tickets and auto close
7 as the abuse type, correct?

8 A. Correct.

9 Q. So you were describing that going forward, CATS was going
02:45:07 10 to ignore the first DMCA complaint with respect to any
11 particular subscriber, correct?

12 A. I think "ignore" was kind of a word I probably shouldn't
13 have used. It's still on the customer's account at that time
14 for evidence, to be able to speak to them about. But it would
15 auto close the ticket, as we discovered, and I think Matt
16 discovered, that many abuses were taken care of after the first
17 complaint would come in.

18 Q. And as the next e-mail several hours later shows -- your,
19 your first e-mailed to what you described as big confusion,
02:45:39 20 right?

21 A. Yeah. And this is -- it goes back to some of the things
22 that people would either call and say, I'm sorry, I'm not clear
23 on this, let's have a weekly meeting or a discussion on it,
24 things like that. So, obviously, I would say there was some
25 big confusion on that.

1 Q. Right. And, and what you then said is -- with respect to
2 these changes, you said: I think we didn't help anyone with
3 this action expect -- except the law-breaking customers.

4 Right?

5 A. That is what I put in there, yes. Again, part my sarcasm
6 and levity and funniness. I used to be a lot funnier back
7 then.

8 Q. What's funny about that?

9 A. I'm sorry?

02:46:22 10 Q. What's funny about that?

11 A. I really couldn't explain it to you. You'd have to be in
12 the midst of abuse issues.

13 Q. And do you recall that, generally speaking, making these
14 changes had a positive effect on the number of inbound calls
15 that Cox was getting?

16 A. I would kind of have to go back to the records on that.
17 Sitting here right now, I can't recall if it was positive,
18 negative, or indifferent. It's not something I focused on in
19 the last couple of years.

02:46:51 20 Q. Well, while you were at Cox, you never undid those
21 changes, did you?

22 A. No.

23 Q. Mr. Zabek, you were generally of the view that the amount
24 of time and money that Cox was spending on copyright
25 infringement notices was ridiculous, right?

1 A. It was a lot. It was a lot. A lot of our time was -- we
2 were handling these, these allegations, the complaints on
3 those.

4 Q. And by "a lot," do you believe it was excessive?

5 A. I don't know if I could characterize that now. It was a
6 while ago. In the midst of it -- probably, probably the
7 wording I would have used is something like this is a lot. It
8 definitely is. I can't say it was excessive or anything like
9 that at this point in time right now, but ten years ago, I
02:47:53 10 might have used that terminology. I don't know.

11 Q. I'm going to hand you what's been marked as
12 Plaintiffs' 275. This is an e-mail -- excuse me -- this is
13 Bates labeled COX_SONY_00005561, and I'll direct your attention
14 to the e-mail on the top from you on June 3, 2010.

15 A. Um-hum.

16 Q. And you sent this to a variety of people involved with the
17 abuse group, correct?

18 A. This is our legal team, my CISO.

19 Q. What is that?

02:48:34 20 A. Chief information security officer.

21 Q. And you wrote this -- at the beginning of the e-mail, you
22 said you said: Internal info. Do not forward.

23 Do you see that?

24 A. Yes.

25 Q. In this e-mail, you say: It costs us so much time and

1 money to handle DMCA, it is getting ridiculous.

2 Right?

3 A. I do.

4 Q. And then you go on to say: On a personal note, and most
5 of you know I am NO -- all caps -- angel; however, when
6 discussing P2P file sharing, no one seems to say you're
7 breaking the law. They always say pirating or stealing, and
8 there are some arguments about stealing data, stupid ones but
9 arguments. If they would just say "breaking the law," argument
02:49:25 10 over. If you do not like the law, you do not break it, you try
11 and change it.

12 Right?

13 A. Yeah, I did say that.

14 Q. So the first thing is you did say in mid-2010 that you
15 thought that the amount of time and money that Cox was spending
16 on infringement notices was getting ridiculous, right?

17 A. I did type that in there. I can't say why -- what was
18 going on at the time. It's been a period of time, of course.

19 Q. But then you go on and you again say you're not an angel.
02:49:52 20 What -- we looked at an e-mail previously where you had a
21 similar reference. Why do you say that?

22 A. Well, to be going into part of my personal life, these
23 folks had known that years ago, I had spent a lot of time in
24 LA, spent a lot of time in bands and doing different things
25 that had happened, and they knew my background, and they knew

1 who I was. I wasn't always a nice guy, you know. I didn't
2 beat people up or anything like that, but they knew, you know,
3 in my youth, I wasn't as solid as I felt I was in my later
4 years.

5 Q. Mr. Zabek, when you began with the abuse group, it
6 originally had five members and then was reduced down to two.
7 Correct?

8 A. Five? Yes. At our corporate office, there were five
9 people, not including the manager, Matt Carothers.

02:50:55 10 Q. Okay. And when did the reduction from five to two occur?

11 A. To two? I'm sorry, I can't recall. If you can refresh my
12 memory on that? To two?

13 Q. Are you disputing or disagreeing that you -- that the
14 abuse group was reduced down to two members?

15 A. I don't remember that number two. I'm sure it could be,
16 but it doesn't sound familiar right now.

17 Q. I'm going to ask you, Mr. Zabek, to look at your prior
18 deposition testimony, please.

19 A. Sure.

02:51:52 20 Q. This is deposition testimony that you provided under
21 oath --

22 A. Um-hum.

23 Q. -- on June 2, 2015, correct?

24 A. Yes, yes.

25 Q. I'd ask you to please turn to page 54, and starting on

1 line 5, you were asked the question: How many employees were
2 in the abuse group prior to you BMG manager?

3 Your answer: Five.

4 A. Um-hum.

5 Q. Question: Do you know why -- or do you have an
6 understanding of why the number of employees in the abuse group
7 was reduced from five to two?

8 Answer: No.

9 Question: Who made a decision to reduce the number
02:52:44 10 of employees in the abuse group?

11 Answer: Somebody well above me, and it came down
12 through my leadership that the change was happening.

13 Question: It came down through whom?

14 Answer: Matt Carothers.

15 Does that -- was that testimony true and accurate
16 when you gave it?

17 A. Yes, that does help to refresh.

18 Q. Was that testimony accurate when you gave it?

19 A. Yes. To the best of my knowledge, yes.

02:53:12 20 Q. The abuse team, the one that had been reduced from five to
21 two, would handle escalations from the TOC and from NSC,
22 correct?

23 A. Yes.

24 Q. As the manager of the abuse team, you would inform the TOC
25 and NSC of policies and procedures for handling infringement

1 notices, correct?

2 A. Yeah. Any of the team in their corporate office could, of
3 course.

4 Q. And the technical operations center, or the TOC, was run
5 by Cox, right?

6 A. Yes.

7 Q. And it would handle all the calls generated from
8 infringement notices, among other things, right?

9 A. Yeah, and then several other things, yes. Yes.

02:54:01 10 Q. Cox as a general proposition didn't like it when
11 customers' calls weren't answered, right?

12 A. In general, yeah, we did not want to have a customer hang
13 up, waiting, things like that. We wanted to make sure that we
14 were handling their issue and helping them.

15 Q. You didn't want dropped calls, among other things, right?

16 A. Yes.

17 Q. So one of the key issues for Cox was making sure that it
18 had an adequately sized TOC staff for whatever number of calls
19 would come in, right?

02:54:35 20 A. That was to be the goal.

21 Q. And then the number and type of customer facing actions
22 that Cox took in response to infringement notices would impact
23 the staffing needed in the TOC, right?

24 A. It could.

25 Q. Or put another way, Cox needed to make sure that the

1 graduated response policies that they had in place would only
2 generate as many calls as the staff could handle, correct?

3 A. I think like anybody's business back then, trying to
4 reduce the phone calls and assist the customer either via the
5 web and e-mail or some kind of help file in a chat was much
6 more efficient for the customers themselves. They can handle
7 the issue quickly also, too.

8 Q. And so the abuse group and Cox would adjust the graduated
9 response policies to try to encourage more automation and less
02:55:36 10 individual phone calls, correct?

11 A. I don't think those things necessarily went hand in hand.
12 I think we were always looking at more automation in any way,
13 shape, or form. I think especially back in those times, it was
14 the wave of the future, as it is now.

15 Even in my current position, we look for automation
16 instead of just trying to put a body back there. If we can
17 make it quick and efficient for the customer, the client,
18 copyright holder, sending us those in, then if we could do it
19 automatically, we would, we would do automation with them.

02:56:09 20 Q. On several different occasions, you went to folks in Cox
21 and sought to increase the size of the abuse team, right?

22 A. Yes.

23 Q. And in each of those instances, your requests were turned
24 down, right?

25 A. In the corporate area, yes, we did not hire folks, things

1 like that, but we did get more personnels as we moved forward
2 in the TOCs, dedicated resources and even with Cox Business
3 also, too. So there were other areas, maybe not directly under
4 my control, that we would get assistance with.

5 Q. And one --

6 A. And again, our automation was pretty stellar in a lot of
7 areas. It was nice.

8 Q. At one point, you went to Mr. Metz and sought to increase
9 the size of your abuse team, right?

02:56:53 10 A. Yes.

11 Q. My question was Mr. Metz rejected your request, correct?

12 A. Mr. Metz was unable to provide us more help.

13 Q. He rejected your request, Mr. Zabek?

14 A. Yes.

15 Q. Okay. And then you went to a Mr. Williams on a different
16 occasion, correct?

17 A. He was after Mr. Metz had left.

18 Q. And this was a separate request or a different request to
19 increase the size of the abuse team, correct?

02:57:12 20 A. It was a separate request.

21 Q. I'm sorry, if you'd please turn to page 112.

22 A. Okay.

23 Q. Line 12, you were asked the question: So Mr. Williams --
24 did Mr. Williams tell you that it would be nice to expand the
25 abuse group?

1 Answer: Yes.

2 Question: But was the abuse group expanded?

3 A. Um-hum.

4 Q. Answer: I'd have to go back to look to be accurate.

5 Question: To be accurate about whether the abuse
6 group was expanded?

7 Answer: Oh, maybe I misunderstood the question. I'm
8 sorry.

9 Question: Was the abuse group expanded?

02:57:50 10 Answer: My apologies. No.

11 And was that testimony that you provided in June of
12 2015 accurate?

13 A. To my knowledge, yes.

14 Q. And, in fact, quite apart from the abuse group, in 2011,
15 Cox downsized the TOC, or the technical operations center,
16 correct?

17 A. They did reduce the numbers, yes.

18 Q. And this was during a period when the number of
19 infringement notices was fairly high, correct?

02:58:36 20 A. I was going to say they were always high. But yes, they
21 were, they were one of our larger issues coming in.

22 Q. In, in -- specifically in April of 2011, Cox reduced the
23 number of TOC employees handling abuse complaints from nine to
24 four, correct?

25 A. During that time, yes.

1 Q. And as you sit here today, do you have any understanding
2 about why Cox made that reduction?

3 A. Really, unfortunately, I can't remember exactly why they
4 would have made it, why they made it. It put us into more
5 automation at that time, which was, which was nice. We got a
6 lot more complaints and issues out to the customers and
7 everything, knowing that we had, you know, smaller personnel.

8 Q. Are you now trying to claim that the reduction was nice?

9 A. No. No. Like I said before, I always want other -- I
02:59:38 10 would always want many hands; they make light work definitely;
11 but I think part of it was we were being forced to say what can
12 we do now here; and that's where we really started kicking in
13 automation.

14 Q. Even apart from people letting go, you were unhappy about
15 the reduction in the staffing to address abuse notices,
16 correct?

17 A. Well, any reduction in staffing --

18 Any reduction of our staff was a bummer.

19 Q. And this reduction was going to reduce -- reduce abuse
03:00:07 20 call center staffing to 44 percent of its prior level, right?

21 A. Yes, approximately.

22 Q. And, and it was a 75 percent reduction in the workforce
23 for residential abuse, correct?

24 A. If those numbers were accurate, yes.

25 Q. I'm going to hand you what was previously marked,

1 Mr. Zabek, as Plaintiff's Exhibit 54. Do you recognize this
2 document, Mr. Zabek?

3 A. Yeah, familiar.

4 Q. Is this a document that you drafted, Mr. Zabek?

5 A. I believe so.

6 Q. And in this document, you described that the past status
7 prior to April 1 of 2011, the TOC had nine people working
8 customer safety tickets. Is that correct?

9 A. Yes.

03:01:24 10 Q. And then down below, you say: On April 1, 2011, the TOC
11 realigned its workforce and replaced the nine team members with
12 four, and you go on to say: These remaining -- these four
13 remaining technicians are not dedicated to abuse, as they
14 assist with other issues that come into the TOC.

15 Right?

16 A. That is what is stated.

17 Q. And you go on on the next page to say that this
18 represented a 45 percent reduction in workforce for residential
19 abuse, correct?

03:01:58 20 A. From nine to four, yes.

21 Q. And you acknowledge that there are now large gaps in
22 coverage on overnight and weekends, correct?

23 A. Yes, I do see that.

24 Q. And then you say: Corporate did not have a voice in this
25 redistribution.

1 Right?

2 A. On that second paragraph: Corporate did not have a voice
3 in the redistribution.

4 Q. By that, you mean you didn't have a voice, correct?

5 A. Correct, or anybody in our team.

6 Q. And you expected that this would lead to longer call hold
7 times, correct, and call response times?

8 A. That was my suspicion at the time.

9 Q. And on the third page, in the conclusion, you said: To
03:02:48 10 deal with the decrease in personnel, corporate abuse has placed
11 more automation on DMCA complaints (our number one issue). We
12 increased the number of times a customer can
13 "self-reactivate" for a DMCA complaint and forced all large and
14 medium copyright holders to place a digital signature in their
15 reports so our system can automate the process.

16 Right?

17 A. That is what is stated.

18 Q. So you were extending the graduated response steps in
19 order to deal with the reduction in staffing, correct?

03:03:23 20 A. If I remember correctly, we -- there was one more
21 self-reactivate in the walled garden added on to this, as we
22 brought up our automation, yes.

23 Q. And then on the, on the -- I guess it's the sixth page,
24 where it says "Cox Business tickets for 2010"?

25 A. Yes.

1 Q. And there you say: There is no auto processing of Cox
2 Business tickets. Is that right?

3 A. That is correct.

4 Q. So there was no automated e-mail notification process to
5 Cox Business subscribers, correct?

6 A. Correct, not automated.

7 Q. Nor was there an automated suspension process to Cox
8 Business customers, correct?

9 A. Correct, not automated.

03:04:19 10 Q. Nor was there any kind of automatic trigger for potential
11 termination, correct?

12 A. Not automated.

13 Q. And so the policy in two thousand -- November 2012
14 essentially eliminated for all intents and purposes
15 terminations of business customers, correct?

16 A. Well, like I said in here, if we believe that it's
17 necessary for a termination, we wanted them to contact
18 corporate abuse. We -- this is one thing that we didn't want
19 our folks in the field terminating internet access on -- we had
03:04:57 20 a lot of different customers, and, of course, each of them have
21 different situations. But hospital, you know, we don't want to
22 hurt their -- kill their internet access from this. It could
23 be -- who knows where it could be coming from. Maybe we needed
24 to assist them more at that time. But if we're going to go
25 into that area, we would want to talk to our legal department

1 on that first.

2 Q. When you say it could be a hospital, you don't know
3 whether it's a hospital, correct?

4 A. Not until I was alerted of the, the issue when they would
5 contact us and say, hey, we think that this needs to be
6 terminated.

7 Q. So you could have had a policy that said, look, we're not
8 going to terminate hospitals, but other business customers we
9 may, right?

03:05:35 10 A. You're getting a lot of specifics on that, and try not to
11 write too many specifics on that because who knows what the
12 next customer would, would be. Like, you know, if we said
13 hospital or fire department or police station or 911, would
14 that offer us any flexibility if there was somebody else where
15 it was a brand new ambulance service? I don't know. It was
16 always for the things that we couldn't think of in the future,
17 too.

18 Q. Mr. Zabek, do hospitals, fire departments, and ambulance
19 services have an infinite right to infringe copyrights?

03:06:10 20 A. I don't believe they do, but --

21 Q. Do you think they should?

22 I'm sorry, please finish your answer.

23 A. I don't believe they do, but I do know that a lot of those
24 places also had things like public WiFi for their guests, for
25 people who are waiting for their loved ones to come out of some

1 kind of surgery. We can't -- we were unable to pinpoint -- not
2 looking at every data that's coming out of our customers'
3 locations to see, was it that, was it their full network, who
4 was actually doing this. You're talking thousands of people on
5 something like that.

6 So we're erring on the side of caution, talk to our
7 legal department and see where we can go from there.

8 Q. So do you think that there's any instance where it's
9 appropriate for Cox to allow a business subscriber to be the
03:06:56 10 subject of thousands of infringement notices without Cox
11 terminating the account?

12 A. I can't think of a situation at the present time. If
13 there's a public WiFi, they may not even know what's going on,
14 even after we contacted them. There's a lot of gray possible
15 area in there, but we don't want copyright infringement
16 happening on any of our networks, whether it was CB or even
17 HSI.

18 Q. Mr. Zabek, I'm going to hand you what's been marked as
19 Plaintiffs' 276, which is an e-mail exchange between you and an
03:07:27 20 individual by the name of Jason Barnhardt in March of 2011.
21 Did I mispronounce that name?

22 A. No, not at all.

23 Q. And this is an e-mail exchange -- excuse me, the Bates
24 label on this is COX_SONY_00005540 through 41.

25 In this, it appears that Mr. Barnhardt is sending you

1 CATS ticket info on a customer account, and he then says -- at
2 the bottom of the history says: Spoke to the customer this
3 morning and he flat out is refusing to do anything on his side
4 and insists nothing is coming from it despite multiple tickets.
5 I tried working with him and have him reset his Linksys
6 password and even changed it if he has one and go through
7 everything, and he is doing nothing but yelling about his
8 system and saying it is not happening, despite me trying to
9 show him the IP address for his router perfectly matching that
03:08:34 10 from the complaint -- matches, excuse me -- that from the
11 complaint.

12 If possible, please give me some insight on where we
13 should go from this point; i.e., suspension or something of the
14 sort.

15 And you responded: Hey, Jason, you can, of course,
16 suspend, but I would suggest you just forward any DMCA
17 complaints to his e-mail. Look at the other DMCA complaints,
18 and you will see blank as their e-mail.

19 He has -- he just has to realize that we must send
03:09:05 20 these to him. If a copyright holder decides to sue, then we
21 want to make sure the customer knows why... and it's the law.
22 Make sense?

23 And then you go on to say: I am not concerned about
24 DMCA and not ready to terminate a CB or Cox Business customer
25 for it yet. It does not cause a big problem on the network.

1 Not like spam, DOS attacks, hacking, etc.

2 You then continue: The customer is doing this on
3 purpose. I just know it (I can feel it) and is not owned IMO,
4 in my opinion. They just want to steal stuff....

5 P.S. Please use our distro -- I assume that's the
6 distribution list -- in case one of us is not in the office.

7 Mr. Zabek, this is a situation where there's a Cox
8 Business customer that you're convinced is intentionally
9 engaged in infringement, and rather than suspend or terminate
03:10:11 10 the account, you say go ahead and just send him an e-mail,
11 right?

12 A. Well, no. Telling Mr. Barnhardt that, of course, he can
13 suspend, but I'm suggesting go ahead and forward those
14 complaints to him. But if John -- or, I'm sorry -- Jason felt
15 that was right, he absolutely could suspend.

16 Q. But, but you would have -- in your judgment, even though
17 you believed that the customer was doing it on purpose, you --
18 all you wanted to do was forward the DMCA complaint to his
19 e-mail, to the customer's e-mail, correct?

03:10:46 20 A. With the complaints he had here, I would continue -- we
21 always would continue to forward them down to him so they would
22 be aware of what's going on, especially if a copyright holder
23 came after them.

24 Q. You said: You can, of course, suspend, but I would
25 suggest that you just forward any DMCA complaints to his

1 e-mail.

2 A. Yes.

3 Q. That's what you said, right?

4 A. Yeah. A suggestion, yeah.

5 Q. Mr. Zabek, I'm going to hand you what's been marked as

6 Plaintiff's 277. This is an e-mail -- excuse me -- Bates

7 labeled COX_SONY_00003761 through 62. This is an e-mail

8 exchange between a variety of corporate abuse folks about an

9 infringement notice associated with a book, and Mr. Sikes says

03:11:37 10 in the top e-mail: Our main responsibility is to pass DMCA

11 complaints on to the CB customers. We do not suspend.

12 Do you see that?

13 A. I do.

14 Q. Do you believe that Mr. Sikes accurately described Cox's

15 policies of not suspending business customers as of February

16 2013?

17 A. No. I personally have actually suspended CB customers for

18 all types of violations, including copyright violations. I

19 don't know why he's making a blanket statement on this one, on

03:12:17 20 we do not suspend. I've suspended customers many a time.

21 Q. Earlier, I think you indicated that for -- infringement

22 notices for Cox Business customers were handled manually and

23 not automatically, correct?

24 A. Yes.

25 Q. At some point in time, that changed, correct?

1 A. We hadn't put any automation in for the Cox businesses
2 that I recall. Everybody would get a, a phone call or an
3 e-mail sent to them manually. In some cases, we would speak to
4 that person, and depending on, you know, what it was, you know,
5 a malware, a spam, especially like a spam, we could set up an
6 agreement with them that -- we'll just say if it was spam or
7 something, that if that came in, we would automatically send
8 that down, but manually, so we'd have to type it out and send
9 that down to the folks.

03:13:18 10 That was just kind of on cycle when we were talking
11 to our customers, trying to be friendly and help them.

12 Q. So every single infringement notice that Cox received with
13 respect to a business customer should have resulted in some
14 communication one way or the other with the customer, correct?

15 A. I think it's going to depend on the incident, but there
16 should be some kind of contact with them.

17 Q. So every single copyright infringement notice that Cox
18 received with respect to a business customer should have
19 resulted in some communication from Cox to that business
03:13:54 20 customer, correct?

21 A. Oh, with the lack of probably the first one that we would
22 kind of hold-for-more, yes, they would contact the customer.

23 Q. Well, up until --

24 A. Yeah.

25 Q. -- November 1 of 2012, even the first one, there should

1 have been some contact with customer, correct?

2 A. We wanted to have a contact with that customer, yes.

3 Q. And then after November 1, 2012, you would hold-for-more
4 on the first notice, correct?

5 A. In those cases, yes.

6 Q. But after that first notice, every single notice should
7 have resulted in some contact with the business customer,
8 correct?

9 A. In those cases, that was the goal.

03:14:29 10 Q. I've put in front of you, Mr. Zabek, what's been marked as
11 Plaintiffs' 278, which is Bates labeled COX_SONY_00005566
12 through 68. These are a series of e-mails between you and some
13 other folks associated with a business account.

14 A. Okay.

15 Q. And, and I draw your attention to the first e-mail, which
16 is dated October 28, 2011, from you to Lindsay Shelly and
17 others in Oklahoma City. Do you see that?

18 A. I do.

19 Q. And the subject matter of the e-mail is "Abuse Issue."
03:15:10 20 Right?

21 A. Yes.

22 Q. And you say: Hello, all. I am sorry this is so long;
23 however, it is very important.

24 Right?

25 A. Um-hum.

1 Q. And you a couple paragraphs down say: I noticed that your
2 market went from the top of the list to the bottom of the list
3 in about 20 minutes. I pulled each ticket, and
4 matthew.cash@cox.com had closed 60 -- 60, excuse me -- tickets
5 in OKC and Tulsa in 13 minutes. These were all copyright
6 infringement complaints. He noted each ticket with "CST will
7 remove files" and then closed the ticket.

8 Would CST be customer in your experience, Mr. Zabek?

9 A. In my experience, it would be.

03:16:03 10 Q. And then you go on in the e-mail and you say: The
11 customer was never called, never sent the follow-up e-mail,
12 etc. He just noted the ticket with a fake note and closed
13 them. No procedures were followed. Tickets were not updated
14 with ICOMS; none of them.

15 Right?

16 A. Yes.

17 Q. So this is clearly an instance where there had been 60
18 tickets associated with copyright infringement complaints where
19 customers had not been called, correct?

03:16:35 20 A. In this case, yes.

21 Q. And you go on to explain in this e-mail that the Cox
22 Business rep has to call the customer, correct?

23 A. They're to call the customer, get the IT person on the
24 phone.

25 Q. And so this is an e-mail criticizing that individual in

1 that group for not doing -- following Cox's policies, correct?
2 A. Yeah. In, in this instance, that representative was not
3 doing what we needed them to do, not assisting our customers at
4 all.

5 Q. In the e-mail, you indicate that you understood that
6 you -- Cox had an obligation to contact the customer and
7 provide them a copy of the complaint, right? Yes?

8 A. Yes.

9 Q. Was your understanding of that based on a discussion you
03:17:30 10 had with legal counsel?

11 A. We did.

12 Q. And similarly, this e-mail says you could be held liable
13 if you didn't do this. Is your understanding of that based on
14 some discussion you had with legal counsel?

15 A. Yes.

16 Q. If you had an understanding that you had an obligation to
17 notify the customer under the law, why is it that you changed
18 your policy in 2010 to ignore an auto close the first notice
19 that you received with respect to any customer?

03:18:10 20 A. With, I think, talking to our legal team, yeah, I think it
21 would be probably better answered by them.

22 Q. So your understanding was based on some discussion you had
23 with legal counsel?

24 A. Yes, sir.

25 Q. I'm going to hand you what's been marked as

1 Plaintiffs' 280. This is Bates labeled COX_SONY_00512332
2 through 335, and I'll direct your attention to the beginning of
3 this e-mail chain, if possible, an e-mail from you on
4 February 28, 2013, to John Civiletto and Phil Agcaoili.

5 A. "Agcaoili."

6 Q. So this e-mail chain in February of 2013, Mr. Civiletto is
7 asking you whether Cox is, is moving down the same road as the
8 Copyright Alert System, correct?

9 A. Right. It should be more like a book. Summary and
03:19:39 10 briefing. Okay, yeah. It looks like John was asking about if
11 we're moving down that road, as was getting more, I guess,
12 advertisement. Um --

13 Q. Publicity?

14 A. Publicity. Thank you, yes.

15 Q. So you, you were responding to Mr. Civiletto?

16 A. Um-hum.

17 Q. And you responded by saying that Cox has had a policy ever
18 since you could remember, correct?

19 A. Yes.

03:20:02 20 Q. And Cox has enforced that policy, correct?

21 A. Um-hum.

22 Q. And then you say Cox has a more liberal strike policy that
23 it enforces, correct?

24 A. Yes.

25 Q. And you say "they," referring to CAS, use the No. 6,

1 right?

2 A. Yes.

3 Q. And you say: We are around ten before termination,
4 correct?

5 A. At that time, yes.

6 Q. So based on your review of the copyright -- excuse me --
7 the Cox graduated response policy as of 2012, isn't it, in
8 fact, true that you weren't at ten strikes before termination.
9 You were at 14 strikes before termination, correct?

03:20:46 10 A. Looking at these, the number would be around 13, 14, yeah.
11 Yes.

12 Q. And then you go on to say -- why do you say 13 or 14?
13 Doesn't the document say 14?

14 A. 13th and then continued offenses after that, so 14.

15 Q. And then in the e-mail that you sent to Mr. Civiletto, you
16 say: We only terminate five to six people a year.

17 Right?

18 A. That is stated in there, yes.

19 Q. So as of 2013, you are saying you only terminated five to
03:21:18 20 six per year, and then you go on and say: And if they call me
21 and start crying and begging, I feel bad and turn them back on.

22 Correct?

23 A. It does state that.

24 Q. You go on at the last paragraph -- excuse me.

25 And you indicate that Randy Cadenhead had been part

1 of the CAS discussions, correct, but that Cox decided not to
2 participate for several reasons, right?

3 A. Okay. I'm sorry. Stating that we already had a system in
4 place and working, they wanted calls to go to our call center
5 run by third party. Yes, these were via messages from
6 Mr. Cadenhead.

7 Q. And Cox -- it also says that Cox didn't want to pay the
8 fee that each ISP was going to have to pay as part of the CAS
9 program, correct?

03:22:33 10 A. Yeah. And their info -- and there was a fee that each ISP
11 paid to the third party.

12 Q. In the last paragraph, you say: Last month, CATS handled
13 50,670 DMCA complaints, taking action automatically, compared
14 to 2,409 DMCA complaints that had to be worked manually by our
15 teams.

16 Correct?

17 A. That's last month, 56 -- 50,670, yes.

18 Q. So here you're telling the senior executives within the
19 company that in a single month, you received over 50,000 DMCA
03:23:32 20 complaints, and of those 50,000, only about 2,400 of them had
21 to be worked manually, correct?

22 A. That, yeah, 2,409 had to be reviewed by an actual physical
23 person before any kind of warning, messages, or anything,
24 action was taken.

25 Q. Mr. Zabek, I'm going to hand you what's been marked as

1 Plaintiff's 281. This is an e-mail exchange in April of 2012
2 between you and others within the abuse group, correct?

3 A. Okay. A message between, yes, the abuse corporate office
4 and our Hampton Roads, with Andrea Dameri in Hampton Roads.

5 Q. Right. So, Mr. Zabek, this is a situation where you're
6 presented with a customer that you described as, as having been
7 terminated and then after being terminated was subject to six
8 suspensions, correct?

9 A. Since his last termination, six suspensions.

03:24:51 10 Q. Is that correct?

11 A. That is what is stated, yes.

12 Q. And you go ahead and say: Give him one last chance.

13 Correct?

14 A. This would be his last chance, and I would instruct Joe or
15 Drew to give him a call.

16 Q. So in order to get to termination, this subscriber in
17 April of 2012 had to have been subject to at least 12 different
18 infringement tickets, correct?

19 A. Yeah. I would really want to look at his account, but by
03:25:25 20 our graduated, he would have a couple on there.

21 Q. A couple or 12 under the graduated response policy?

22 A. I need, I need to look at his account to really go on that
23 and say exactly.

24 Q. But under graduated response, termination would happen
25 after -- at this point in time after 12 tickets, correct?

1 A. If things were worked properly.

2 Q. Okay. So it could be more than 12, right?

3 A. It could be less also, too.

4 Q. And then even after termination, you must have reactivated
5 him, correct?

6 A. It seems to be the case.

7 Q. And then there were six more suspensions, correct?

8 A. Um-hum.

9 Q. You would often reset after reactivation so that they
03:26:00 10 would start again at the first notice, correct?

11 A. Well, as we had stated before, that was one of the
12 guidelines, but they could if they saw, you know, in this case,
13 he's got six suspensions. They were not warning him. They
14 were just starting to do suspensions, getting a little bit
15 heavier with this, with this person.

16 Q. And, and you at this point were being asked whether -- you
17 were being asked to review his account for possible
18 reactivation, right? That's what Mr. Sikes says in his e-mail?

19 A. Yes.

03:26:30 20 Q. And you said yes, we should reactivate him and give him
21 one last chance, correct?

22 A. With the results that I see in here, yes. It looks like
23 he had an issue with his router, and this was one of the --
24 probably the situations that we had where we would want to make
25 sure that we were doing everything correctly, that he wasn't

1 doing -- wasn't somebody stealing his WiFi, going through
2 there. And, in fact, it looks like we made suggestions for him
3 to lock his system down even more.

4 Q. Do you know how many infringing files this customer
5 distributed over the period of time that Cox had him on the
6 network and didn't terminate him?

7 A. I would not know.

8 EXAMINATION

9 BY MR. ELKIN:

03:27:14 10 Q. I'm counsel for Cox, and I'm going to ask you now a series
11 of questions. I just want to ask you some background
12 introductory questions, although some of this was covered
13 earlier.

14 Where do you live?

15 A. Presently?

16 Q. Yes.

17 A. Atlanta, Georgia.

18 Q. Okay. And how long have you lived in Atlanta,
19 approximately?

03:27:39 20 A. I always estimate around, around 15 years. Somewhere
21 around there.

22 Q. Okay.

23 A. Probably a little more.

24 Q. And you started working at Cox, although not in Atlanta,
25 since when?

1 A. 1991, January of 1991.

2 Q. And for how long a period of time did you work for Cox?

3 A. It was 25 years.

4 Q. And take us through the various positions and time
5 frames -- I'm not going to hold you to them specifically --
6 that you had from 1991 to 2016.

7 A. Well, the refresher earlier -- some of the dates start
8 blurring -- but I spent five, six years just in customer
9 service on the phones, answering calls from customers for
03:28:28 10 billing, sales, everything. Learned just about every product
11 we had on those.

12 From there I moved on to the marketing department,
13 had some folks over there, they -- you know, computers,
14 personal computers were getting even bigger at that time, and
15 they knew I knew some stuff about Excel and needed some help
16 with payroll, so I moved over to the marketing department for
17 approximately about two years.

18 One of the leaders in that group had known I had been
19 into computers and video games and things like that and said,
03:29:04 20 hey, this new thing of cable modems is coming. Would you like
21 to be involved in that?

22 And I said, of course, yes.

23 Did the beta test, installed five cable modems after
24 hours with one engineer, in different areas, and that was
25 our -- the first modems ever, ever installed within Cox

1 Communications.

2 From there, I moved directly into the field service
3 supporting -- installing and supporting those modems for our
4 customers and, of course, their equipment as much as we could.
5 We couldn't take responsibility for their equipment, but if we
6 could help them, heck, yeah, we were going to help them, you
7 know.

8 Spent a couple years doing that. I think it was
9 about two years. And I kind of -- I have to look at the dates,
03:29:52 10 but I kind of got sick being in the field. It's kind of
11 lonely. I liked people, so I wanted to get back into the
12 office, and Cox Business had an opening where -- for technical
13 support, so not only modems, but fiber lines, telephone, very,
14 you know, large internet pipes that we were selling at that
15 time, too. Moved on to them for that.

16 Then from there -- my wife actually worked for Cox
17 Communications, too, and had a job offer in Atlanta, and after
18 a lot of resistance, because I didn't want to leave California,
19 scared of change, we made the decision, yeah, let's move to
03:30:33 20 Atlanta and see what happens, and got here, and there was a
21 position within the abuse department.

22 Of course I had a couple of friends here, and said,
23 yeah, turn your résumé in. And I turned it in to Matt
24 Carothers, who I had never met before, and they hired me to
25 handle the Cox Business side and really was managing and making

1 sure that people were contacting customers and doing hopefully
2 the right thing for folks.

3 From there became lead, handled some of the
4 residential or started learning residential, handling that.

5 From there Matt had moved on to an engineering
6 position, which he was incredibly well-suited for, and I moved
7 into the manager role from there.

8 And then senior manager at the end.

9 They're both rescues. One's in the hospital right
03:31:18 10 now, but, you know, she's going to be okay.

11 Q. Okay. When you were first hired, when you first acceded
12 to your position as an abuse engineer, what department within
13 Cox were you employed?

14 A. There was the just abuse department, which was -- which
15 fell under -- I believe it was security, information security.

16 Q. What was the role of the abuse department?

17 A. It was to handle complaints, allegations, whatever was
18 coming into our systems that were -- they were telling us that
19 there might be some type of nefarious activity originating from
03:32:06 20 our network. Could be -- could be a router, could be a
21 customer, could be a server, could be anything. But if it
22 originated -- again, originated from our network, we would get
23 those complaints.

24 We would research those complaints and then take the
25 next actions, depending on, on what they were. That was daily,

1 consistently doing that.

2 Q. Were there broad areas of concern that the abuse
3 department focused on at that time?

4 A. There was always challenging issues, like DOS attacks and
5 spam that would, you know, hit the network and copyright and
6 everything, but really every complaint that came in, we -- I
7 felt we took very seriously, you know, trying to get the
8 information to the customer and assist them as fast as
9 possible.

03:32:55 10 Q. And who did you first report to when you became an abuse
11 engineer?

12 A. That was Matt Carothers.

13 Q. And what were your duties as a -- as the lead abuse
14 engineer when you acceded to that position?

15 A. Pretty much trying to handle all the questions that Matt
16 would have had so he could focus on other things in his
17 position. If there was a question on maybe what should we do
18 with this or what type of complaint is this or maybe someone
19 was not understanding a complaint that was sent in, they'd call
03:33:24 20 me and we'd go over it and see if we could actually determine
21 what was going on, and if not, we'd reach back out to those
22 folks and say, maybe give us some more information, those types
23 of things.

24 Q. I'm going to mention a few different areas that I think
25 your deposition testimony touched on, and I'm going to ask you

1 to describe for me exactly what you did as lead engineer, lead
2 abuse engineer on -- in those areas.

3 One is with respect to network security.

4 A. With network security, we had always wanted to make sure
5 that our network itself, whether that was, again, server,
6 customer, cable modem, router, whatever it was, was not
7 impacting the rest of the internet. And I think it was kind of
8 a feeling with all the ISPs. We -- big, giant network, as the
9 internet is, we can affect each other by not handling certain
03:34:21 10 violations that would come from the network, such as, say, a
11 DOS attack. So we would be very vigilant in making sure those
12 were not hurting hopefully the rest of the internet coming at
13 least from us.

14 Q. And what did you do with respect to customer safety?

15 A. Customer safety was trying to make sure our customers were
16 safe on the internet. I used to say a long time ago when I
17 would give speeches, it was if I knew -- if you knew what I
18 knew about the internet, you would not be on the internet.
19 Back in those days, interesting place, scary place, lots of
03:34:51 20 folks, you know, blackmail, e-mails, malware, things like that,
21 and it was very scary.

22 So we were trying to protect our customers as much as
23 possible to make sure they, they were safe, really. I mean, we
24 didn't want identity theft and those things happening to
25 anybody.

1 Q. And what types of abuses would be visited upon Cox
2 customers that you would have to focus on?

3 A. There's not ones that we didn't focus on.

4 Q. Just describe what they are, some examples.

5 A. Copyright. Again, DOS attack, hacking, threats of
6 harassment. The worst one, child pornography, you know. We'd
7 have to handle those cases if it was coming or originating from
8 our network and do research on those types of things. A lot of
9 spam also, too. Botnets, organized crime, botnets. Did a lot
03:35:45 10 of takedowns of those with law enforcement, also. So we had a
11 myriad of issues coming in, myriad.

12 Q. Now, at some point, did the abuse group change names?

13 A. Oh, yes. Yeah.

14 Q. What would -- what did it change to?

15 A. It changed. We noticed that when you call a customer to,
16 you know, tell them what was going on and assist them and you'd
17 say, hi, my name is Jason, I'm with the abuse department, it
18 kind of sets them back into a defensive position. We didn't
19 want that. We were there to help them every single time.

03:36:18 20 They were -- they're not computer experts. They just
21 wanted to talk to their grandkids or kids or whatever.

22 So we decided to change the name to customer safety,
23 and it became a more friendly, as we called those folks, and
24 especially from the letters, and in my opinion, it felt that
25 they would work with -- or they would work with us at that

1 point in time instead of being in a defensive and I'm not --
2 you know, "it's not me" type of thing doing that.

3 So we felt it was a lot more customer friendly.

4 Q. And at the time that you became the lead abuse engineer,
5 who reported to you?

6 A. Well, really nobody really reported to me. Like I said, I
7 didn't do reviews or hiring or anything. I would consult, of
8 course, with Matt. What we needed at that time was an
9 escalation point, and I became that at that time, making
03:37:06 10 myself -- made myself the lead. It wasn't a raise or anything
11 like that or anything with it. It was just you're doing a
12 great job, so we think you can do more.

13 Q. I want to focus on the periods -- period of 2013 and '14.

14 A. Okay.

15 Q. 2013 and '14, as best you can.

16 What role did you have within the safety department
17 during those two years?

18 A. At that time, I believe I was the manager of customer
19 safety.

03:37:39 20 Q. And what were you -- what were your duties and
21 responsibilities during that period?

22 A. Just about everything that we had talked about before but
23 we were now responsible for, you know, the top level of policy
24 enforcement reviews of our folks, training, budgeting, which
25 was never fun, those types of things.

1 Q. And during your tenure at the safety department, this goes
2 back to the entire period of time that you worked either in the
3 safety department or its predecessor name, the abuse
4 department --

5 A. Okay.

6 Q. -- did you ever have occasion to speak directly to Cox
7 subscribers about abuse complaints?

8 A. Of course, yes. That was probably one of the more
9 enjoyable ones. Not always. You get yelled at a lot, but I
03:38:32 10 did enjoy helping customers and speaking with them.

11 Q. And approximately how many customers would you say you've
12 spoken to over time?

13 A. Oh, I could -- I, I -- it would be tough to even fathom a
14 guess on there. It would probably be in the triple digits, a
15 couple hundred. I'm --

16 Q. Hundreds?

17 A. Yeah. I really wouldn't want to speculate, but it was a
18 lot.

19 Q. Okay. And what was the nature of those conversations,
03:38:58 20 generally?

21 A. Depended on what the, what the abuse issue was. Each one
22 we would, you know, take individually and we would talk to the
23 customer and, first of all, explain the situation that was
24 happening, make sure that they got the complaint, and we'd read
25 it along with them. If there was any information that we could

1 give them to help explain it more, or even websites sometimes,
2 we would pass that information along also, too. But it depends
3 on what it really was.

4 If they needed help securing some of their equipment,
5 we would do the best we could. We didn't know every piece of
6 equipment out there, but we would try to help them also secure
7 it also, too, so violations didn't happen, if that's where they
8 were originating from.

9 Q. To what extent, if any, did the role of education play in
03:39:43 10 speaking to customers?

11 A. I really determined that our job was really a customer
12 service and education field. The folks out there buying
13 internet access in a lot of areas are not computer geniuses.
14 They just want to plug in and talk to their families and do
15 well at, you know, Facebook and all that stuff, and that's all
16 they want to do.

17 They don't know about firewalls and routers and, you
18 know, antivirus and things like that. So we would -- well, we
19 would try to educate them as much as possible.

03:40:19 20 In fact, we even had after we would talk to them,
21 again, depending on the situation, we'd have follow-up letters
22 that would describe everything that we talked about and say try
23 these certain things and hopefully that will help you.

24 But again, in a lot of cases, every situation can be
25 different. Yeah.

1 Q. Did you ever -- do you recall ever speaking to any Cox
2 subscribers about copyright infringement?

3 A. Yes, definitely. Several customers.

4 Q. And do you recall the role that you played in the
5 conversations that you had with customers related to copyright
6 infringement?

7 A. It was just like any other role that I would have, is
8 talking about them, what the, you know, what the accusation
9 was, what the complaint was. The -- we'd send them a copy of
03:41:12 10 it, of course, also, too. And if they had further questions on
11 it, what was the next steps to do.

12 We would then try to help them and say, you know,
13 hey, let's look through all the software that you have, is
14 there something on there, and hopefully try to assist them into
15 stopping any kind of activity.

16 Q. You testified earlier in your deposition about copyright
17 infringement notices that came in through CATS. Did you ever
18 personally have occasion to review any of those notices?

19 A. Yes.

03:41:41 20 Q. And were you ever able to determine the accuracy of the
21 alleged copyright infringements in any notices?

22 A. No.

23 Q. Why not?

24 A. Well, I think I've said a couple times we didn't watch our
25 customers and what they were doing. We didn't spy on them.

1 You know, again, there was the, you know, allegation, but we
2 couldn't determine if the customer was actually doing it. We
3 didn't see their data at all, and I think it's -- it was good
4 we didn't spy on our customers from that.

5 Q. A number of questions that Mr. Oppenheim put to you
6 earlier in the deposition insinuated that somehow you took a
7 flippant attitude toward copyright infringement as a type of
8 abuse. Do -- is that true?

9 A. I -- we weren't flippant about any complaint that came in.
03:42:33 10 Every one we took seriously, and this is why, you know, our
11 ticketing system, of course, was set up. But we wanted to make
12 sure that we were going through those and doing the right
13 thing, again, for the customers, the internet, and the
14 complainants also, too. Took every one very seriously.

15 Just because we might have a laugh afterwards or try
16 and keep the levity out there does not mean that we did not
17 take any of that seriously. It's a very difficult job, and
18 those people would get beat down, and trying to keep them up
19 and happy, to make, to make that next phone call, you know, was
03:43:07 20 part of our job responsibilities, too.

21 Q. How much of your time was actually spent dealing with
22 copyright infringement notices?

23 A. Hum. Possibly half. Maybe around 60 percent of, of those
24 times.

25 Q. Would you have done this job had you not wanted to take

1 copyright infringement seriously?

2 A. I love this job. I would have done it no matter what.

3 You probably could have paid me less and I would have done it.

4 Well, yeah, we would want to make sure that any
5 infringement was handled properly, whether it was copyright or
6 spam.

7 Q. Now, what steps did you take to take it seriously?

8 A. Oh, we would always have research when a, when a complaint
9 would come in. If there was any questions or any challenges
03:44:02 10 around that, we would actually contact the copyright holder.

11 We would then, of course, also make sure that we were available
12 if the customer had any also questions around it, too. And
13 then any complaint coming in, we would want to make sure that
14 it had the proper information that was in there that we could
15 then give down to our, our customer.

16 Q. What is -- what does CATS do?

17 A. CATS, it's a -- well, short for Cox Abuse Tracking System.
18 It's a --

19 THE COURT: Why don't we cut it off now. Let's take
03:44:34 20 our mid-afternoon break, all right? Sorry if I startled
21 anybody.

22 All right. Let's take 15 minutes. Thank you.
23 You're excused.

24 NOTE: At this point, the jury leaves the courtroom;
25 whereupon, the case continues as follows:

1 JURY OUT

2 THE COURT: About how much more is left?

3 MR. DUVAL: I believe 20-30 minutes.

4 THE COURT: Okay. And you've got another witness
5 after that?

6 MR. OPPENHEIM: Mr. Beck, who will be a live witness,
7 which I think everybody needs.

8 THE COURT: Okay. All right, anything before we
9 break?

03:45:42 10 MR. OPPENHEIM: Not from me.

11 MR. ELKIN: No, Your Honor.

12 THE COURT: All right. Thank you. We're in recess.

13 NOTE: At this point, a recess is taken; at the
14 conclusion of which the case continues in the absence of the
15 jury as follows:

16 JURY OUT

17 THE COURT: I have an update. I'm not going to be
18 able to sit on Friday. I can't get enough time between the
19 docket and I have a memorial service for a former deputy clerk,
04:09:30 20 and so it doesn't make any sense to bring the jury back for two
21 hours, and so I just want to let you know we won't sit on
22 Friday, and I'll let them know now. Okay?

23 Anything else before we continue?

24 MR. OPPENHEIM: Not from plaintiffs, Your Honor.

25 THE COURT: All right. Thank you.

1 All right, Joe, let's get our jury, please.

2 NOTE: At this point, the jury returns to the
3 courtroom; whereupon, the case continues as follows:

4 JURY IN

5 THE COURT: All right. Please have a seat.

6 Just an update on our schedule. We're not going to
7 sit on Friday. I've got a whole docket that I can't rearrange
8 and also some other personal obligations, and I don't want to
9 bring you in just for two hours of testimony and cost you the
04:10:48 10 whole day. So we won't -- we'll go through Thursday, but we
11 won't have court on Friday. All right? Thank you.

12 All right. Let's continue.

13 NOTE: The testimony of JASON ZABEK via video
14 deposition continues to be played into the record as follows:

15 THE WITNESS: It's a stand-alone system that would
16 take in any complaints, allegations, whatever, to the e-mail
17 address of abuse@cox.net. It had some AI logic in there that
18 would look for key words with inside the e-mails and/or
19 subjects, also digital signatures, as we had stated before,
04:11:35 20 from, say, copyright holders, valid e-mail addresses that we
21 had known coming back from.

22 So a lot of the AI processing that it would do to
23 make sure that the, the complaint was valid, and then it would
24 create a ticket on that automatically for somebody to look at.

25 In the past, we had to look at the e-mail and then

1 create a ticket from it after reviewing it. So it really sped
2 up, I mean, sped up a ton, a ton of production on that.

3 BY MR. ELKIN:

4 Q. Did you think CATS was an effective mechanism to address
5 issues of copyright infringement?

6 A. Was it effective?

7 Q. Yes.

8 A. I believe it was, yeah. We had different sections in
9 there that it could definitely create the tickets to, and I
04:12:17 10 think some other ISPs also found it also a good system, too, as
11 I believe we licensed it to one or two other companies, too.

12 Q. Do you remember which ones?

13 A. I believe that one of them was CenturyLink, with Sara and
14 them down in Florida, and I keep thinking that the other one
15 might be Bright House. I might be wrong on that.

16 Q. All right. What about Charter?

17 A. It's a possibility. I just don't remember that one, I'm
18 sorry.

19 Q. What was the primary purpose behind CATS?

04:12:49 20 A. Oh, it was to organize the abuse complaints that would
21 come in and then put them again into hopefully a nice
22 organization. You could see what the complaints were coming
23 in, how many spam complaints came in, how many copyright
24 complaints came in, how many malware, hacking complaints came
25 in.

1 And they could be laid out all in front of you to
2 tackle the day and start working those tickets.

3 Q. Was any aspect of CATS automated?

4 A. Well, as we had talked about, a lot of it was, was
5 automated. With -- especially on the copyright complaint,
6 certain spam complaints we could send down also, too, depending
7 on the complaint and where it was coming from. We had a lot of
8 automation in there. We could send customers warning letters
9 automatically. It was quick, very fast.

04:13:45 10 Q. Percentage-wise, during the 2013-'14 time frame, what
11 would you say in terms of a percentage was CATS automated?

12 A. I'd probably feel, to the best of my knowledge, somewhere
13 around, more than likely, 80 percent, give or take.

14 Q. And what automated responses could CATS take with respect
15 to copyright infringement complaints?

16 A. Well, if the -- the first thing is if the, the complaint
17 was not valid, maybe it didn't have the actual alleged
18 infringed works, it could actually send an e-mail back to them
19 saying, hey, we're missing these types of things, and we'd
04:14:27 20 actually give them a list of, you know, please ensure that
21 you're getting these, and those folks would kindly send them
22 right back after fixing them.

23 When we would receive those in, depending on steps,
24 it could automatically e-mail the customer from that. From
25 there, it could then actually suspend the modem also, too.

1 Q. When you -- when you said earlier, Mr. Zabek, that the
2 CATS could automatically send e-mails, what would it do with
3 those e-mails? Would it contain anything?

4 A. Oh, yeah. If we were sending an e-mail to the customer,
5 it would have a full description of what was going on. We'd
6 also send the complaint to them also, too, at the bottom of the
7 e-mail. And then wording in there, you know, to please ensure,
8 you know, that this activity is not going on, secure your
9 router, make sure you're not infected. We'd give them a, a lot
04:15:22 10 of different steps that hopefully they could take to stop the
11 infringement.

12 Q. Okay. You mentioned suspensions a moment ago. What kind
13 of automated suspensions was CATS capable of doing?

14 A. They could suspend on -- on the highest level, it could
15 suspend the modem itself, taking it -- taking the customer so
16 they could not get online at all and then forcing the customer
17 to actually give a phone call and call us to get their service
18 back on.

19 Q. And what was the primary purpose for all of these
04:15:56 20 automated steps?

21 A. For a lot of that, it was a lot of efficiency. I mean,
22 automation is -- in so many cases, is the wave of the future,
23 and it has been for years. It's faster. You know, if CATS can
24 parse through an e-mail in a couple of seconds, that's a lot
25 faster than a human looking at it, and we can get the

1 complaints down to those folks relatively quickly.

2 Q. And did you ever form a view as to whether or not they --
3 CATS fulfilled the -- its purpose?

4 A. Yes, I think it did.

5 Q. In what way?

6 A. Well, fulfilling its purpose was as those complaints would
7 come in, it would send those notifications out. We would -- in
8 some cases, we would actually get feedback from the customers,
9 whether it was a phone call or an e-mail back asking for more
04:16:44 10 help.

11 I think it did a really good job, and again, I think
12 that's why we were able to license it to a couple of other
13 ISPs, and I think they felt pretty good about it, too.

14 Q. Mr. Oppenheim asked you a series of questions throughout
15 the deposition about terminating a subscriber. Do you know
16 whether Cox could automatically terminate a subscriber based on
17 a copyright infringement complaint?

18 A. Not automatically. We would always want a human to
19 review.

04:17:15 20 Q. Why, why is that?

21 A. To make sure that we were doing the right thing, make sure
22 that everything was accurate, make sure that we also -- did we
23 help the customer enough down there, was there something that
24 we missed or that we didn't -- we weren't able to assist them
25 with.

1 Terminating their service is a pretty big deal,
2 internet access. Maybe in the early days it wasn't, but at
3 least in this day and age, I mean, people are running
4 everything off the internet, alarm systems, their phones.
5 Goodness. I don't know much in my house that doesn't have an
6 internet connection, including my, my thermostat.

7 So, you know, doing a termination is -- it's big,
8 it's dramatic, and we wanted to make sure that we were doing
9 the right thing before we took that step.

04:18:08 10 Q. I want to now turn to Cox's graduated response process,
11 and again, I want to focus for the moment on the 2013 and 2014
12 period. Could you describe Cox's graduated response process
13 during that time period?

14 A. Yeah. During that time period, we would -- as we were
15 getting a copyright notification in, we would generally at that
16 time hold the first one, kind of a hold-for-more, gathering
17 more evidence. Then the second one, third one, fourth -- I
18 think I'm probably going to get the numbers wrong -- would be
19 message warnings to the, to the folks, with our phone number on
04:18:48 20 there, of course, to call us at any time with any questions.

21 Then we'd move into suspensions. That was the --
22 somewhere around the 10th, 11th, 12th -- I'm sorry, I think it
23 was around the -- I'd have to look at the number, but there was
24 two suspensions into what we called our soft-walled garden,
25 where we would have a myriad of information on why, you know,

1 they were in this, in the walled garden, and they would be able
2 to release themselves after acknowledging it.

3 And then from there, it would go into the hard-walled
4 garden, where they actually had to make a phone call into our
5 office.

6 Q. What was the purpose of having customer care in the
7 graduated response program?

8 A. Oh, we really felt that -- e-mails are in many cases
9 incredibly impersonal. It doesn't show tone. You know, things
04:19:48 10 can be very much lost in an e-mail, and really, if there was a
11 chance to -- if a customer was confused and needed assistance,
12 we really did want to talk to them.

13 I mean, we tried as much automation as we could to
14 make sure that the customer would be able to solve that problem
15 without making a phone call and it would be easy for them
16 hopefully, but if they needed to be, we wanted to make sure
17 that they understood that we were there.

18 And I think the conversations with them, I think it
19 made a bigger impact. We could answer questions right there on
04:20:19 20 the fly after a couple of minutes instead of maybe 20 or 30
21 e-mails back and forth.

22 For me it was a personal connection. I liked a lot
23 of our customers. I thought they were -- you know, it was nice
24 talking to them every once in a while. Not all of them. You
25 know, some of them were very mean, as customers could be.

1 Q. To what extent did education play any role in the
2 graduated response?

3 A. It was almost the entire extent on that. Every time
4 someone would call in, we were trying to educate them to make
5 sure that, you know, look, you need to stop doing this. If
6 it's -- if you're not doing it and you're infected, we need to
7 help you to try and figure that out. If you need to get
8 professional help, we'll help you out there and send you to
9 somebody who can give you an assistance on it.

04:21:07 10 Q. And what was the -- what was the purpose behind sending
11 the customer's actual notices of the complaint itself?

12 A. Well, I think they had a right to know that somebody had
13 kind of said an allegation against them. I think they -- it
14 was -- you know, we'd want them to know about it when we would
15 talk to them, or send it via e-mail also, too. They should see
16 the complaint that was lodged against them, and that's why we
17 sent it down to them.

18 They could then at that point in time, maybe they
19 were searching their hard drives or there was something
04:21:44 20 actually going on. We felt that it did help them to do a
21 little research on if this was actually happening or not.

22 Q. And did you -- with regard to this soft wall and hard wall
23 suspensions that Mr. Oppenheim took you through on your direct,
24 what was the purpose behind the soft wall suspension?

25 A. You know, for me it was -- if they got to that point, it

1 kind of felt -- couldn't take on everything, but it kind of
2 felt maybe did we fail them? Did they not get the e-mails?
3 Did their kids get the e-mails and delete them? Who knows?

4 It was more of a dramatic type of alert saying, hey,
5 there's something going on here and why haven't you handled it?
6 And we wanted to make sure that, you know, again an escalation
7 of the issue for them. And hopefully, that would hit home with
8 them more than just possibly an e-mail, too.

9 Q. And what about the hard wall suspension? What was the
04:22:47 10 purpose of that?

11 A. At that point in time, then we'd have to say that it looks
12 like our, you know, maybe some of other steps were not working.
13 Again, it was, hey, you know, did your son or daughter get into
14 the wall garden when they got home from school and then the,
15 you know, the parents maybe not even know about it as the
16 accountholder? We would, of course, hope they did.

17 Putting them into the hard-walled garden would force
18 the actual accountholder to then call, call us. You know, a
19 kid couldn't call and say, hey, I don't have my internet
04:23:22 20 access. We'd say, great. What's your last four of your
21 social, verify this, and we would make sure that we were
22 talking to the parents or at least the accountholder, not a
23 roommate, or maybe just not a visitor in the household at that
24 time.

25 Q. Mr. Zabek, did you ever perform a review as to whether or

1 not the various steps in the graduated response that Cox had,
2 such as the warnings and the suspensions, were effective in
3 reducing the number of copyright infringements related to the
4 customers who had been the subject of earlier notices?

5 A. We felt that it did help them. I don't -- I'm not going
6 to sit here and say it helped everybody, but we felt that it
7 did help them to really hopefully bring the impact home that
8 there's something going on here, we need you to fix it now.

9 Q. Thank you. How do you -- how did you -- how do you know
04:24:13 10 that helped them?

11 A. We'd see certain customers and the copyright infringements
12 would stop. They'd move on with their lives and not doing it
13 anymore. And we felt that really the soft-walled garden and
14 the hard-walled garden would help in those cases.

15 In certain other cases, we'd see that one or two
16 e-mails would also stop the infringement also, too.

17 Q. Did you ever form an understanding as to whether most
18 subscribers would continue to receive copyright infringement
19 notices after being warned?

04:24:47 20 A. We would see certain accounts -- I have to say accounts
21 because I can't -- I don't know how many people were living
22 there -- you know, not have copyright infringements after a
23 certain number of warnings, and even into our soft and
24 hard-walled garden, we would see those.

25 In other places, you know, customers would continue

1 to do it also, too, but we felt that we had a pretty good,
2 pretty good handle on helping that customer to stop the, stop
3 the actions.

4 Q. And did you ever form an understanding as to whether most
5 subscribers would continue to receive copyright infringement
6 notices after being suspended by the soft-walled garden?

7 A. Been a period of time, but if I remember correctly, the
8 numbers did show that we would have repeat offenders not repeat
9 offending after going into either our soft or hard-walled
04:25:49 10 garden. And again, the caveat is not every customer, of
11 course, but we felt we had -- we were doing a pretty good job
12 in educating our customers on what was going on.

13 Q. Okay. You anticipated my next question, which is, did you
14 ever form an understanding as to whether most subscribers would
15 continue to receive copyright infringement notices after being
16 suspended in the hard-walled garden?

17 A. That was a -- that was kind of our big one. They -- you
18 know, once going into there and talking to our 2.5 folks, we
19 did, we did have an opinion that did help quite a bit for those
04:26:22 20 customers, especially having personal conversations with them.

21 Q. Yes. Did you ever form a view as to whether Cox's
22 graduated response as to copyright infringement had any
23 educational aspect to it?

24 A. I think our entire response was education. If you've seen
25 the letters that we sent out to our -- even some of the things

1 that we would talk to customers about, it was a lot of
2 education. These were folks that had no idea what they were --
3 what was going on. So we'd want to try and educate them as
4 much as possible so they could do the right thing.

5 Q. At some point, customers who continued to be the subject
6 of a copyright infringement notice would be reviewed for
7 termination, whether it's step 13, 14, or thereafter, correct?

8 A. Yes. We would always have a review by humans.

9 Q. Would Cox ever automatically terminate a subscriber's
04:27:18 10 account based on copyright infringement complaint when it got
11 to that point?

12 A. We, we never had an automatic termination on any
13 complaint, including copyright. There was always a human
14 looking at it, ensuring that we've, you know, done our due
15 diligence and do the right thing.

16 Q. And why was that?

17 A. We didn't want to make a mistake. Again, I go back to,
18 you know, shutting somebody's internet service off, you know,
19 even back then was big, very dramatic.

04:27:52 20 I see, you know, kids doing homework on the internet
21 and all these other things, you know. So we wanted to make
22 sure if that had to happen, that we were, we were doing it the
23 right way and that all the evidence pointed to that.

24 Q. I think it was right before we broke for lunch,
25 Mr. Oppenheim had asked you some questions about whether in

1 December of 2012 the so-called reactivation after a customer
2 was terminated was dispensed with.

3 Have you had occasion to consider since Mr. Oppenheim
4 asked you that question whether the so-called reactivation
5 consideration was dispensed with?

6 A. If I remember correctly, around that time, that was when
7 our counsel had stated that we could review the accounts for
8 reactivation after, like, a six-month period of time.

9 Q. And when did that take place, approximately?

04:28:58 10 A. Oof. I would be off on the dates if I was saying that. I
11 think it was -- I believe it was somewhere around that 2012
12 year.

13 Q. So with respect to the period of 2013 and 2014, when a Cox
14 customer was terminated, they did not get reactivated until six
15 months?

16 A. That was the -- yeah, that was the goal.

17 Q. And to the best of your knowledge, did that occur?

18 A. To the best of my knowledge.

19 Q. Earlier, you had testified that, in words to this effect,
04:29:40 20 that Cox wouldn't spy on its customers, that you don't do that,
21 you can't do that. My question is actually a little different.
22 Do you know whether Cox could actually verify whether its
23 subscribers was, was committing copyright infringement, as set
24 forth in the copyright infringement notices that you received?

25 A. No, we couldn't see if they were actually doing that.

1 Again, we didn't look at the data that they were doing or what
2 they were doing on, on the internet.

3 This is privacy, to allow those customers to have
4 hopefully a good experience out there without their ISP
5 watching their every move.

6 Q. Do you know whether you could access a subscriber's
7 computer to verify that they had a copy of the copyrighted
8 content claimed to have been infringed?

9 A. Oh, goodness, no.

04:30:36 10 Q. Do you know whether there was any way that Cox could have
11 accessed the subscriber's computer?

12 A. I mean, I think the only way that we could would be to
13 call them and say, give us your computer. That might be about
14 it, but nothing remotely that they -- no.

15 Q. You never did that?

16 A. Of course not, no.

17 Q. In your experience, did you ever discover times when you
18 believed a notice was incorrect as to whether an infringement
19 actually occurred?

04:31:12 20 A. Um, it's been -- it's been a while. I couldn't give out
21 specifics, but talking to some of our, our customers in certain
22 areas seemed -- some things always seemed different. You'd be
23 talking to maybe somebody in -- we had a large populace in
24 Phoenix and Florida which were elderly, and we would get some
25 complaints for music and/or movies that they had no idea who

1 they were. You know, you'd talk to maybe an elderly couple --
2 and I'm sorry, I don't mean that flippantly as elderly.

3 You know, looking at those -- it was always a
4 challenge to look at that and say, you know, nice, Mrs. Jones,
5 85-year-old lady downloading Lil Wayne and stuff, and she
6 didn't even know who they were.

7 So it was -- when you'd hear something like that,
8 you'd want to maybe possibly do some more research on that.

9 Q. Okay. So -- thank you for that.

04:32:27 10 So there was some prior questions that Mr. Oppenheim
11 put to you on your use of the words "DMCA" and whether or not
12 you used that term synonymous with copyright infringement. Do
13 you remember that?

14 A. Yes.

15 Q. Are you a lawyer?

16 A. No.

17 Q. When you made reference from time to time in various
18 e-mails related to we're obligated under the DMCA to do this
19 and we're obligated under the DMCA to do that, were you
04:33:05 20 referencing some legal understanding on your part as to what
21 Cox was obligated to do in order to avoid copyright
22 infringement?

23 A. My understanding would generally come from our counsel,
24 and that's where I would get the direction from.

25 Q. You made various references to DMCA and e-mail

1 communications.

2 A. Um-hum.

3 Q. Mr. Oppenheim asked some questions about various caps or
4 limits on the number of notices that CATS would receive from
5 time to time. Do you remember those questions?

6 A. Yes.

7 Q. Do you remember those questions?

8 A. I do remember those, yes.

9 Q. Were those limits for various copyright content providers
04:34:02 10 or their agents ever increased?

11 A. Oh, yes.

12 Yes. I think we had seen that in a couple of the
13 messages that were brought out today.

14 Q. Why would Cox increase the limits for certain copyright
15 content owners?

16 A. They asked.

17 Q. Was it -- why did you accommodate them?

18 A. Well, in many cases, they, they had a valid argument, and
19 in other cases, there was a nice discussion. We wanted to make
04:34:40 20 sure that we were helping them out as much as possible and that
21 they were comfortable with it also, too.

22 One thing is, is our automation, when we really
23 started getting that rolling with the signatures and
24 everything, too, it really freed up some time to be able to
25 take in more, you know, complaints into the system also, too.

1 Q. And did you personally support increasing the caps for
2 various copyright content owners from time to time?

3 A. Oh, sure. I mean, I would see myself on several of those
4 e-mails, like with the HBO, IP-Echelon, for that; and I thought
5 it was a good idea.

6 Q. So I think during the course of your testimony today, I
7 believe you have recounted instances of working at the Cox
8 safety group --

9 A. Yeah.

04:35:33 10 Q. -- related to addressing copyright infringement
11 allegations against subscribers.

12 Do you remember testimony that you've been giving all
13 through today?

14 A. Yes.

15 Q. Did you think it was a waste of time to do that while you
16 were at Cox?

17 A. No.

18 Q. Why not?

19 A. Well, I think it was kind of important. You know, with
04:35:58 20 violations of copyrights, we want to make sure that people
21 aren't grabbing that stuff on the internet without compensation
22 to the right people.

23 Again, all of our abuse complaints were really,
24 really important that would come in, and we wanted to make sure
25 our customers were hopefully doing the right thing.

1 Q. See if you can find 261 in there. I would try to find it
2 myself, but --

3 MR. OPPENHEIM: Can you describe what it is so that
4 we --

5 MR. ELKIN: Yes. 261 is a document that
6 Mr. Oppenheim marked. It is a two-page document --

7 THE WITNESS: Oh.

8 MR. ELKIN: -- that is Bates-stamped COX_SONY_ 8318,
9 and it is -- that's the document.

04:36:51 10 Q. Now, when Mr. Oppenheim -- do you remember reading this?
11 I'm looking at -- I direct your attention to the first e-mail
12 on the first page. This is the one that Andrew Thompson sent
13 to the HRD-TOC and CCI - Abuse Corporate on June 12, 2014, at
14 7:40 a.m.

15 Do you see that?

16 A. I do.

17 Q. And Mr. Oppenheim directed your attention to the second
18 sentence, to insinuate that, that Cox kept the subscriber to
19 retain the revenue.

04:37:31 20 Do you remember that discussion?

21 A. I do remember that.

22 Q. Now, he did not refer you to the third paragraph. Could
23 you read that out loud?

24 A. From Mr. Thompson's message?

25 Q. Yes.

1 A. Please tell the customer we are giving them one more
2 chance and be sure to cover all bases -- be sure to cover all
3 bases to help the customer prevent further complaints, as you
4 always do.

5 Q. That's it.

6 Do you -- did you think it was important that, that
7 the safety department be sure to cover all bases to help
8 customers to prevent further complaints?

9 A. Absolutely. We wanted to make sure that we were giving
04:38:19 10 our customers every bit of information that could assist them
11 to stop any kind of activity, whether, again, it was copyright
12 or malware or spam or anything. Make sure before we go into
13 that termination, which can be pretty devastating, we wanted to
14 make sure that we had done all of our due diligence with these
15 folks and help them as much as possible. I think it's just the
16 right thing to do.

17 Q. So take a look at the next sentence on the second page
18 that says: Once the customer has been terminated for DMCA,
19 we've fulfilled the obligation of the DMCA safe harbor and can
04:39:01 20 start over.

21 And then it goes on to say -- and this is the one
22 that I wanted to ask you about, the second paragraph -- but,
23 again, no real right or wrong. We have some leeway here, but
24 know that once a termination happens, we have fulfilled safe
25 harbor.

1 What do you mean by use of the words "we have some
2 leeway here"?

3 A. Well, it goes back to, again, trying to empower our people
4 who are actually our frontline folks -- I always call them
5 boots on the ground -- that, you know, as they did research on
6 the, on the complaints, on the allegations, that if there was
7 something that didn't maybe look right, something seemed odd,
8 could be a couple of things, that they could turn around and
9 either talk to the customer, possibly give them another chance,
04:39:57 10 talk to the copyright holder. Again, going and doing the right
11 things, we had some, some leeway around that.

12 Q. You remember that Mr. Oppenheim took you through the
13 subject of Cox receiving notices of copyright infringement
14 which contained settlement offers?

15 A. Yes.

16 Q. And you recall a portion of those questions dealt with
17 Digital Rights Corp, or Rightscorp?

18 A. Yes. A portion of that did, yeah.

19 Q. So let me direct your attention to -- on pages 6 through,
04:40:35 20 through 8, at the bottom of page 6, under the heading "Cox's
21 Treatment of Rightscorp's notices."

22 A. Okay.

23 Q. Do you see where I am?

24 A. No. 15?

25 Q. Yes.

1 A. Yes, sir.

2 Q. So, now, 15 begins on March 9, 2011, Rightscorp, using the
3 name Digital Rights Corp, began sending notices of claimed
4 copyright infringement to abuse@cox.net.

5 I'm skipping over a sentence referring to an exhibit.

6 Quote, these notices stated your ISP has forwarded
7 you this notice. This is not spam. Your ISP account has been
8 used to download or upload or offer for upload copyrighted
9 content in a manner that infringes on the rights of the
04:41:29 10 copyright owner. Your ISP service could be suspended if this
11 matter is not resolved. You could be liable for up to \$150,000
12 per infringement in civil penalties. We represent the
13 copyright owner. This notice is an offer of settlement. If
14 you click on the link below and log into Rightscorp, Inc.,
15 automated settlement system, for \$10 per infringement, you will
16 receive a legal release from the copyright owner.

17 Do you see that?

18 A. Yes, I do.

19 Q. What was wrong with that?

04:42:04 20 A. Well, I mean, if you're looking at this is they're saying
21 that, you know, you get a legal release if you actually pay us
22 for it, but it's, again, after the fact. And, you know, my
23 understanding of what we wanted is the activity to stop, and
24 looking at this, in my opinion, they're saying it's okay to do
25 it; just pay us after the fact. I mean, it's, it's a larger

1 amount, of course, at \$10 for a song.

2 But I did not see -- it's interesting, I did not see
3 where it would stop the copyright. It was more like, hey, it's
4 cool. Thank you for giving us this money, and everything is
5 hunky-dory and continue on with your life. Yeah.

6 Q. Well, do you see -- so if I direct your attention to
7 paragraphs 16, 17, and 18, you, you see the various
8 conversations that you had with Mr. Cadenhead?

9 A. Yes.

04:43:00 10 Q. Do you remember those discussions that you had with him
11 about the Rightscorp notices?

12 A. Yes. Some of them, yes.

13 Q. Did the two of you speak with regard to whether he
14 determined whether those settlement -- whether the copyright
15 notices from Rightscorp should be accepted by Cox?

16 A. Yes. He had made a determination on it that -- saying
17 that we should not accept them, as they were asking for
18 monetary demands and threatening against our, our customers.

19 Q. Did you agree with him?

04:43:39 20 A. I did.

21 Q. Why?

22 A. Again, I'm not a lawyer, but my understanding was to stop
23 the infringement, and looking at this, it was like it's okay if
24 you pay us. But the other thing is is, you know, we don't know
25 if the customer was actually doing the infringing also, too.

1 So, again, it seemed that it's not what the, the DMCA
2 was trying to do at that time, to create a whole another
3 revenue stream for someone else. That's what Mr. Cadenhead had
4 also stated.

5 Q. So paragraph 17 refers to an e-mail that you sent to
6 Rightscorp asking them to remove the settlement offer and for
7 you then to process the notices. Did they ever agree to that?

8 A. No, not to my knowledge.

9 FURTHER EXAMINATION

04:44:27 10 BY MR. OPPENHEIM:

11 Q. Mr. Zabek, roughly speaking, during the period of 2010
12 through some period of 2012, when you were head of the abuse
13 department, Cox would, after it terminated subscribers for
14 copyright infringement, would regularly reactivate them shortly
15 after the termination. Is that generally speaking true?

16 A. I wouldn't say regularly. I'd say we'd still review all
17 the cases on those, and there have been reactivations.

18 Q. And those reactivations would occur immediately after --
19 often would occur immediately after the termination, correct?

04:45:06 20 A. I'd have to go back and look at the records. I couldn't
21 tell you how fast or how long they waited.

22 Q. So based on your testimony with -- to Mr. Elkin, something
23 changed in 2012; is that correct?

24 A. Yes.

25 Q. What changed?

1 A. I believe that was the conversation with Randy Cadenhead
2 and the reactivation for some DMCA.

3 Q. And what was that conversation?

4 A. That if we reviewed the account, you know, and felt there
5 was any kind of evidence, could we bring the customer back onto
6 the, onto the network.

7 Q. But you were already bringing customers back onto the
8 network, so I don't understand how -- what you were changing.

9 A. With, with his -- there was a period of time he wanted us
04:45:54 10 to at least wait six months before we'd even start reviewing
11 those types of things.

12 Q. So in late 2012, Mr. Cadenhead instructed you that if
13 you're going to reactivate, you should wait at least six
14 months? Is that what you're saying?

15 A. That's what he had stated.

16 Q. And is that what you, in fact, started doing in late 2012?

17 A. In the cases, you'll see some of them, yeah, looking at
18 those afterwards, if the customer would call in. We would
19 never contact the customer, but if the customer would call in.

04:46:25 20 Q. Okay. So -- and this was in roughly December of 2012; is
21 that right?

22 A. Roughly, yeah.

23 Q. So, so just so I understand the big picture, prior to
24 December of 2012, when you would terminate a subscriber for
25 copyright infringement and you reactivated, you would often

1 reactivate immediately. After December 2012, when you reviewed
2 the account for termination, you would be waiting six months
3 before you would consider a reactivation.

4 Is that an accurate summary of what you've said?

5 A. Nobody got reactivated without a review. I would have to
6 look at the records also, too, to say how long was it. In
7 certain cases, I'm sure it was probably short. In other cases,
8 it was probably long.

9 Q. And after December of 2012, when you changed your internal
04:47:16 10 policy about reactivation, did the abuse department terminate
11 less subscribers for infringement?

12 A. I don't know if it was --

13 Q. Was there any internal --

14 A. -- more or less.

15 Q. I'm sorry, I didn't mean to interrupt you.

16 A. I don't know if it was more or less. I couldn't --

17 Q. Was there any internal discussion that said anything along
18 the lines of, well, if we're not going to reactivate them right
19 away, we really shouldn't terminate as many people?

04:47:49 20 A. No. Not to my knowledge at all.

21 Q. So if the numbers show that there were far less
22 terminations after December of 2012, would you have an
23 explanation for that?

24 A. There could be a multiple -- multitude of reasons. I
25 would like to think it was because we were getting actually

1 better at doing our automation and assisting the customer in
2 solving the challenge before it got to that point.

3 Q. You were asked a series of questions by Mr. Elkin as to
4 whether or not you under- -- you believed that CATS was
5 effective at addressing copyright infringement. Do you
6 remember those questions?

7 A. Yes.

8 Q. And you answered that you did believe that CATS was
9 effective at addressing copyright infringement, correct?

04:48:35 10 A. I do.

11 Q. So you -- when you say "effective," you're testifying that
12 CATS was effective at processing the incoming notices and, and
13 dealing with them. Is that what you're saying?

14 A. Well, in processing with our -- with the automation, yeah,
15 it was very quick and did a very good job.

16 Q. Right. And, in fact, you said that you didn't want to spy
17 on your customers, correct?

18 A. Well, Cox didn't like to spy on its customers, of course.

19 Q. You were doing all of these things, and yet it's your
04:49:04 20 testimony that you believe that CATS was effective at stopping
21 infringement? Is that -- is that accurate?

22 A. I believe not only CATS but also our team, in helping
23 those customers to understand what was going on and then solve
24 the challenge.

25 Q. Did you ever ask a copyright -- one of the copyright

1 owners whether they thought the infringement was decreasing?

2 A. No.

3 Q. So when you're testifying that you believe that CATS was
4 effective, it's purely based on whether or not you saw
5 additional notices, correct?

6 A. That and the -- yeah, the reduction of those coming into
7 our network.

8 NOTE: End of videotape deposition.

9 THE COURT: All right, that completes our deposition.
04:49:52 10 All right, next witness.

11 MR. GOULD: Your Honor, we wanted to read into the
12 record, if we needed to, the list of exhibits that was entered
13 during the Zabek deposition. If you'd like, we can do that
14 once the jurors leave.

15 THE COURT: Yeah, why don't we do that at the time.

16 MR. GOULD: Respect their time.

17 The plaintiffs call Brent Beck.

18 BRENT BECK, PLAINTIFFS' WITNESS, SWORN

19 THE COURT: Good afternoon, Mr. Beck.

04:51:24 20 THE WITNESS: Good afternoon.

21 THE COURT: Please proceed, Mr. Gould.

22 DIRECT EXAMINATION

23 BY MR. GOULD:

24 Q. Nice to see you again, Mr. Beck. My name is Jeff Gould.
25 We've met before?

1 A. Indeed.

2 Q. Thank you for being here.

3 Mr. Beck, you work at Cox Communications, correct?

4 A. Yes, that's correct.

5 Q. And your primary role there is to support CATS, correct?

6 A. Yes.

7 Q. In fact, you're the primary person responsible for
8 managing CATS?

9 A. Yes, that's correct.

04:51:45 10 Q. And you're the lead developer and engineer for CATS?

11 A. Yes.

12 Q. You develop software for CATS?

13 A. Yes.

14 Q. You fix software bugs, try to fix software bugs in CATS?

15 A. Yes.

16 Q. And you write and add new software feature in CATS?

17 A. Yes, I do.

18 Q. You don't have any degrees in software development, do
19 you, sir?

04:52:07 20 A. Degrees in software development, I do not.

21 Q. And what about programming?

22 A. Programming --

23 Q. You don't have any degrees in programming, do you?

24 A. Not in computer software programming.

25 Q. When Cox receives an infringement notice by e-mail at

1 cox@abuse.net -- let me strike that.

2 Cox receives infringement notices at cox@abuse.net,
3 correct?

4 A. Abuse@cox.net.

5 Q. And CATS, the copyright abuse -- excuse me, the Cox abuse
6 tracking system then pulls e-mails from that inbox into CATS,
7 correct?

8 A. That is our general flow.

9 Q. Now, focusing on the 2012 to 2014 time frame, CATS didn't
04:52:57 10 actually pull all the incoming infringement notices from that
11 abuse inbox; isn't that correct?

12 A. Did not pull all of them from the inbox. One could say
13 that, yes.

14 Q. And, in fact, starting in 2011, Cox didn't pull any
15 e-mails from that inbox from an entity named Rightscorp or
16 Digital Rights Corp; isn't that correct?

17 A. I do not remember the exact timeline.

18 Q. Approximately 2011, give or take?

19 A. I don't recall the timeline exactly, but --

04:53:32 20 Q. And Rightscorp is an antipiracy vendor who sent copyright
21 infringement notices to Cox on behalf of a music publisher;
22 correct?

23 A. I understand they sent complaints on behalf of a music
24 publisher.

25 Q. Those notices never made it into Cox's inbox because Cox

1 just blocked them at the e-mail level, right?

2 A. There was a time where they were rejected at the e-mail
3 server level.

4 Q. So this wasn't an instance where the e-mail came in, you
5 looked at it, did something with it, and then said we don't
6 want to do this. For the Rightscorp notices, they just -- they
7 never even made it into the e-mail inbox, right?

8 A. At a particular period in time, yes, that became
9 necessary.

04:54:15 10 Q. And you're aware, Mr. Beck, that Rightscorp claims that in
11 the 2012 to 2014 period, it sent Cox over 9 million copyright
12 infringement notices?

13 A. In the -- can you repeat the time frame, please?

14 Q. You're aware that in the 2012 to 2014 time frame,
15 Rightscorp claims to have sent Cox over 9 million infringement
16 notices?

17 A. That's quite a lot.

18 Q. You're aware that that's their position, right, that
19 they've said that?

04:54:44 20 A. I believe I have heard that.

21 Q. In fact, didn't you state that in a sworn declaration in a
22 prior matter?

23 A. Possibly.

24 Q. But you can't verify that number, can you?

25 A. How many they had sent to us? So if they were rejected at

1 the mail server level, then that wouldn't have been something I
2 would have spoke to in a, in a declaration, I don't think.

3 Q. But you can't verify it, can you, whether it's right or
4 wrong?

5 A. That would have to be at -- I mean, I'm inside the mail
6 server basically. So, I mean, I'm on the other side of the
7 mail server, so I wouldn't have visibility to do that if
8 they're rejected at that level.

9 Q. I want to make sure I understand. Cox blocked these at
04:55:34 10 the mail server level, which means the inbox -- it never popped
11 up in the inbox, correct?

12 A. Yeah, they were rejected by the mail server.

13 Q. And because they never popped up in the inbox, Cox just
14 doesn't know how many were blocked in that manner, right?

15 A. CATS certainly would not know.

16 Q. CATS wouldn't know. You don't know?

17 A. I don't know.

18 Q. So you can't verify or dispute the number of notices that
19 Rightscorp sent, correct?

04:56:00 20 A. Once the reject rule was put in place, no.

21 Q. I'm sorry, did you say no?

22 A. Once the mail server reject rule was put in place, I have
23 no way to verify further inbound volume.

24 Q. I didn't mean to interrupt. I apologize.

25 A. No worries.

1 Q. Now, setting aside the number of notices that Rightscorp
2 may have sent, Cox didn't forward any of those to its
3 customers, correct?

4 A. Sorry, setting aside -- can you repeat that?

5 Q. Setting side whether it was 1 million or 10 million or
6 50 million, Cox didn't forward to customers the blocked
7 Rightscorp notices, correct?

8 A. No. Those were, those were blocked for reasons, yes.

9 Q. It didn't send them to the customers?

04:56:44 10 A. Correct.

11 Q. And Cox didn't suspend any subscribers based on
12 infringement allegations received from Rightscorp, correct?

13 A. No, not if they were blocked.

14 Q. And Cox didn't ask any customers or subscribers to call in
15 and talk to the abuse department about allegations of
16 infringement based on Rightscorp notices that Cox blocked,
17 correct?

18 A. No, not if the notices were blocked.

19 Q. And Cox didn't take any customer facing action at all with
04:57:11 20 respect to those --

21 THE COURT: Well, they weren't received, so naturally
22 that's the answer. So let's move on.

23 BY MR. GOULD:

24 Q. Cox doesn't know what customers were referenced in those
25 infringement notices, does it?

1 A. Not in those particular notices if they were blocked.

2 Q. Including whether those infringement notices implicated
3 any of the same subscribers that received infringement notices
4 from plaintiffs, correct?

5 MS. GOLINVEAUX: Objection, Your Honor.

6 THE COURT: He doesn't know the answer to any of your
7 questions, you've made that pretty clear, because the e-mails
8 never were received. Thank you. Let's move on.

9 MR. GOULD: If we could pull up, actually in your
04:57:52 10 binder, tab 11? PX 335.

11 MR. OPPENHEIM: Does the witness have a binder?

12 MR. GOULD: I'm sorry.

13 THE COURT SECURITY OFFICER: All right, counsel.
14 Thank you, sir.

15 All right, Mr. Beck.

16 THE WITNESS: Thank you.

17 BY MR. GOULD:

18 Q. At tab 11, sir.

19 A. Did you say 11?

04:58:25 20 Q. 11, yeah.

21 A. Thank you.

22 Q. Mr. Beck, do you recognize this e-mail?

23 A. Take a quick look over this.

24 Q. If it helps, sir, I'm just going to focus on the top
25 e-mail from you on the front page.

1 A. Okay. Yes.

2 MR. GOULD: I move PX 335 into evidence.

3 THE COURT: Any objection?

4 MS. GOLINVEAUX: No objection, Your Honor.

5 THE COURT: It's received.

6 MR. GOULD: If you could pull up the top e-mail from
7 Mr. Beck.

8 BY MR. GOULD:

9 Q. Mr. Beck, this is an e-mail chain from February 2014 with
05:00:19 10 several of your colleagues and folks at CenturyLink, some --
11 and this continues from a chain earlier. I want to focus on
12 your language at the top, starting with "Sources." You say:
13 Sources like Digital Rights Corp are blacklisted with us, so we
14 silently delete the e-mail messages without any
15 parsing/ticketing/etc. As soon as our POP3 client recognizes
16 the From address in the headers as blacklisted, we delete the
17 message without retrieving its message body."

18 Do I read that correctly?

19 A. I believe so, if I followed along.

05:00:57 20 Q. Now, Mr. Beck, you're asking describing a different kind
21 of blacklisting than we talked about a few minutes ago with
22 Rightscorp, aren't you here?

23 A. Earlier we discussed rejecting at the mail server
24 platform.

25 Q. Earlier we discussed rejecting at the mail server

1 platform, and here you're describing the blacklist process
2 where you actually receive e-mails and then delete them, right?

3 A. They're received to the inbox.

4 Q. And then silently deleted?

5 A. They are deleted if the sender matches the -- a
6 blacklisted sender.

7 Q. And you wrote here that they're silently deleted; is that
8 right?

9 A. That is the phrasing, yes.

05:01:31 10 Q. And this process relates to other blacklisted parties but
11 not to Rightscorp, right?

12 A. This, this applied to Rightscorp initially.

13 Q. For a short time until they moved to blocking at the mail
14 server level?

15 A. Yes.

16 Q. So respectively, at this point in time, there were two
17 kinds of blacklists, one for blocking e-mails coming in and one
18 for receiving and deleting e-mails?

19 A. So rejecting in the mail server was specifically in
05:01:58 20 regards to an event with Rightscorp. It wasn't really
21 something that we had built and designed to do that. It's not
22 something we applied to any other sender at any time. So that
23 was more of a, a failure mitigation step.

24 The blacklisting method within CATS, where we're
25 actually seeing the messages in the inbox, that has been

1 applied to other senders.

2 Q. They are two separate processes, one blocked at the e-mail
3 and one received and deleted, correct?

4 A. Yeah. One is rejected by the mail platform. The others
5 comes into the inbox and then are considered.

6 Q. And we talked about with the Rightscorp blocked notices,
7 but with these received and deleted e-mail messages, Cox --
8 excuse me -- CATS also did not retrieve the body of the e-mail,
9 correct?

05:02:45 10 A. Yes, that's correct. The blacklisting was based on the
11 sender.

12 Q. And so like the Rightscorp notices, the blacklisted
13 deleted e-mails also didn't make it into CATS, didn't generate
14 a customer action, correct?

15 A. Yes, that's correct. That was the intent of the
16 blacklist.

17 Q. One difference, though, is that with the deleted messages,
18 you actually have some logs about how many came in and were
19 deleted; isn't that right?

05:03:08 20 A. I can't speak to what logs the mail servers would have
21 had. I can only speak to the CATS platform. So for the CATS
22 platform, we could see how many we were -- how many were
23 hitting that blacklist.

24 Q. So for that second category of blacklist, we might be able
25 to find some numbers about how many came in and were deleted in

1 that manner, right?

2 A. Yes, that's possible.

3 Q. Let's take a look. Tab 14. Is tab 14 in your binder,
4 sir, PX 353?

5 And, Mr. Beck, do you generally recognize the
6 document?

7 A. Yes.

8 MR. GOULD: I'd move to admit PX 168 -- I'm sorry --
9 PX 353.

05:04:15 10 THE COURT: 353. Any objection?

11 MS. GOLINVEAUX: Yes, Your Honor. May we approach?

12 THE COURT: Yes.

13 NOTE: A sidebar discussion is had between the Court
14 and counsel out of the hearing of the jury as follows:

15 AT SIDEBAR

16 THE COURT: What's your objection?

17 MS. GOLINVEAUX: Your Honor, these are interrogatory
18 responses served in the BMG case. Your Honor denied Cox's
19 motion in limine to exclude BMG documents in evidence, but
05:04:53 20 without prejudice to our raising issues during trial in this,
21 we think it's inappropriate for them bringing in interrogatory
22 responses from the BMG case for this purpose.

23 THE COURT: What's the purpose of the document?

24 MR. GOULD: So the purpose of the document is that
25 there is -- there are a couple interrogatories that are

1 extremely critical to the issues in this case: State the
2 number of DMCA notices you received each month during these
3 years and the person most knowledgeable, and there's a chart
4 which shows the number received and number deleted.

5 This is highly probative evidence of how Cox was
6 handling abuse complaints at this time and what they did and
7 didn't do and what they made their customers aware of and how
8 that impacted in notices in steps in the graduated response
9 that the customers were at when they received other notices.

05:05:50 10 THE COURT: Okay. Why can't we redact the BMG part
11 of this?

12 MR. GOULD: Yeah, we'd be fine with that.

13 THE COURT: It seems to be relevant otherwise. Does
14 that work?

15 MS. GOLINVEAUX: That's fine, Your Honor.

16 THE COURT: Okay. All right. Let's redact it out.

17 MR. OPPENHEIM: We can just ask him not to show it,
18 and then we'll redact it.

19 THE COURT: Correct.

05:06:06 20 MR. GOULD: And just to preview, there is another
21 interrogatory that I'm going to use, the third supplemental,
22 where they gave the list of warnings, suspensions, and
23 terminations. The position -- our position is the same. Maybe
24 we can save ourselves some time, but certainly --

25 MS. GOLINVEAUX: We were just given this as he went

1 up, so we're going to have to look at it.

2 MR. ELKIN: Your Honor, we don't have a problem with
3 the evidence. It's just a question of the BMG.

4 THE COURT: Right. I agree.

5 MR. GOULD: We have no problem redacting that out.

6 THE COURT: Okay. All right. Thank you.

7 NOTE: The sidebar discussion is concluded;
8 whereupon, the case continues before the jury as follows:

9 BEFORE THE JURY

05:07:10 10 MR. GOULD: Your Honor, I'd move to admit PX 353
11 subject to the discussion we just had.

12 THE COURT: All right. It's received.

13 BY MR. GOULD:

14 Q. Mr. Beck, you're familiar with what an interrogatory is?

15 A. Yes.

16 Q. It's a, it's a question and sworn answer that's provided
17 in a litigation like this?

18 A. Yes.

19 MR. GOULD: If we could turn to the very last page of
05:07:34 20 353 and pull that up for the witness on the screen?

21 Oh, yes, it's okay.

22 BY MR. GOULD:

23 Q. Mr. Beck, do you see that this is a sworn verification
24 from Marcus Delgado?

25 A. Okay.

1 Q. And Mr. Delgado is swearing that the information is true
2 to the best of his knowledge in this document, correct?

3 A. That appears to be what it states.

4 Q. If you could turn to page 11, please? I want to look at
5 interrogatory No. 5. And the question that's asked here is:
6 State the number of DMCA notices you received each month from
7 January 1, 2010, to the present, and identify the person(s)
8 most knowledgeable about such notices since January 1, 2010.

9 Do you see that?

05:08:49 10 A. Yes.

11 Q. And then if you flip ahead a couple of pages, you'll see
12 at the end of a chart, you're listed as the person most
13 knowledgeable about the CATS database? I'm just asking you on
14 the last page, it lists you as the person most knowledgeable
15 about the CATS database, correct?

16 A. Yes, I see that.

17 Q. Do you agree with that statement?

18 A. Yes.

19 Q. Now, I want to go back to the narrative answer and chart
05:09:33 20 on this question, and the narrative answer starts on page 12
21 and goes into 13, and it describes information that appears in
22 this chart on the next few pages, correct?

23 A. Yes.

24 Q. And the first thing it says is that, starting with e-mail
25 notices: E-mail notices received at abuse@cox.net that relate

1 to alleged copyright infringement are handled in one of two
2 ways. If the sender is not blacklisted, the notice is entered
3 into Cox's CATS system.

4 That's the second column in the table below, right?

5 A. Um-hum, yes.

6 Q. And if you'd just look at the table, it has a column
7 listing that first thing, "Notices in CATS." Do you see that?

8 A. Yes.

9 Q. Okay. And then the next sentence -- and we'll look at
05:10:29 10 some of those, but I want to make sure we understand this
11 chart. The second sentence says: If the sender is
12 blacklisted -- this is what we were talking about before -- the
13 e-mail notice is automatically deleted and not entered into the
14 CATS.

15 And then it describes an exception, correct?

16 A. Yes, it does.

17 Q. And the exception is the Rightscorp notices; is that
18 right?

19 A. I'm looking for the exception explanation.

05:11:04 20 Q. It says: The figures in the third column below do not
21 reflect e-mail notices that were not received at abuse@cox.net
22 because those notices were blocked by the Cox mail server?

23 A. Yes.

24 Q. So the first column is notices that Cox received -- I'm
25 sorry -- CATS received, and the second column, called "Deleted

1 Notices Not Stored in CATS," the second one, deleted notices,
2 those are the notices that Cox deleted, correct?

3 A. Those were deleted by CATS, yes.

4 Q. And the notices from Rightscorp that were blocked don't
5 appear in these charts?

6 A. That's correct.

7 Q. Okay. And then this third column, it looks like it's a
8 small exception about a small number that I think we can just
9 move past.

05:11:53 10 Now, the last sentence of the narrative says that for
11 a particular month, the sum of those columns reflect all e-mail
12 notices received at abuse@cox.net in that month that relate to
13 alleged copyright infringement, correct? Basically, you could
14 do the math horizontally and figure out the total notices per
15 month?

16 A. Yes. Yes, that should be correct.

17 Q. Now, if we could just go to the chart, please, and just
18 kind of -- let's go to the next page and zoom up a little bit,
19 and then just kind of scroll down slowly, and let's look and
05:12:41 20 eyeball the figures in the first two columns: notices in CATS
21 and deleted notices, and do you see that over time, Mr. Beck,
22 keep going, the deleted notices start to increase?

23 Let's go to the next page, please.

24 Do you see that by 2013, the deleted notices starting
25 in February 2013 start to increase a bit more into the 114,000,

1 123,000, 109,000? Do you see that?

2 A. Yes.

3 Q. And you see that as the months continue, that the deleted
4 notices actually exceed the number of notices that CATS
5 accepted?

6 A. That is the case for some of the months, yes.

7 Q. Isn't it the case for all of the months there shown in
8 2013, sir?

9 A. No, it's not.

05:13:53 10 Q. No, it's not? Is there one that you see where the deleted
11 notices are smaller than the accepted notices?

12 Oh, you're right. May 2013, there were about 10,000
13 more accepted than deleted. And the other months, the deleted
14 exceeded the accepted, correct?

15 A. Yes. That matches what I'm seeing.

16 Q. Now, I've done the math here, and I counted the number of
17 deleted notices in the years shown in this chart, and it's
18 about 5 million. And is there any reason to doubt my math?

19 A. I would have to run the numbers myself to speak to that.

05:14:37 20 Q. Okay. And then I did the same for the claims period.

21 And if we could pull up the first slide of the
22 demonstrative?

23 What this slide shows, sir, is the claim period,
24 February 2013 through November 2014, for the information we
25 just looked at, including the accepted notices, the deleted

1 notices, and the total notices.

2 Do you see that the total number of notices was about
3 5.7, 5.8 million that Cox received in this time period?

4 A. Based on the document, yes.

5 Q. Assuming the math is correct.

6 A. That's right.

7 Q. And do you see that the number that Cox accepted was just
8 over 2 million, and that comes to about 36 percent of that
9 total?

05:15:31 10 A. I see.

11 Q. And do you see, Mr. Beck, that the number that Cox deleted
12 is about 3.68 million, which comes to about 63 percent of the
13 notices?

14 A. I see that.

15 Q. So according to this sworn information that Cox provided,
16 Cox deleted over 63 percent of the infringement notices it
17 received in 2013 and 2014, correct?

18 A. Based on the numbers we're looking at.

19 Q. And not one of those would have received a customer facing
05:16:03 20 action of any kind, correct?

21 A. For the deleted notices. They may have received notices
22 from non-blacklisted senders, however.

23 Q. Of those 3.68 million, not a single customer faced any
24 action, correct?

25 A. For those particular notices.

1 Q. And you don't know how many of those millions of notices
2 pertain to the subscribers who are identified in the notices
3 from plaintiffs, do you?

4 A. I just know if they are deleted, then we do not have
5 copies of those.

6 Q. Now, I want to talk a little bit about what CATS does when
7 it receives a copyright infringement notice from a
8 non-blacklisted party. So first CATS automatically scans the
9 notice for information. You call it parsing; is that right?

05:16:54 10 A. That's a general term I would use, yes.

11 Q. And CATS tries to figure out what type of abuse complaint
12 it is?

13 A. Yes.

14 Q. So it tries to figure out is this a copyright infringement
15 complaint?

16 A. Yes, that's correct.

17 Q. And it looks for an IP address, a date, and a time related
18 to the instance of infringement identified, correct?

19 A. Yes. Those are some of the things we look for.

05:17:15 20 Q. And that allows CATS to match that infringement notice to
21 a particular customer?

22 A. Those are some of the key values we would use.

23 Q. So that's a process that CATS does. It matches that
24 information to try and find the customer, right?

25 A. Yes, that's part of the flow.

1 Q. And this tells Cox who the customer is that was the
2 subject of this infringement notice, that the notice was about,
3 right?

4 A. That ties us back to the customer account in question.

5 Q. I want to turn to what we sometimes call in this case the
6 ticket data. It's PX 19. And I'm afraid I can't give you a
7 paper copy because it's quite large. It's one of the digital
8 exhibits.

9 Mr. Beck, you were involved in preparing a
05:18:07 10 spreadsheet of certain ticket data for infringement notices in
11 this case; is that correct?

12 A. Is this the --

13 Q. Actions ticket history?

14 A. What we're referring to as the ticket action history, yep.

15 Q. Did I get it wrong? Ticket action history?

16 A. I think ticket action history.

17 Q. You're familiar with the document I'm talking about?

18 A. I am, yes.

19 Q. It's a large spreadsheet?

05:18:28 20 A. Yes.

21 MR. GOULD: We move to admit PX 19.

22 THE COURT: Any objection?

23 MS. GOLINVEAUX: No objection, Your Honor.

24 THE COURT: All right. I thought it was in.

25 BY MR. GOULD:

1 Q. At a high level, Mr. Beck, this ticket data reflects
2 copyright infringement tickets and actions that Cox took on
3 those tickets for the 57,000 or so subscribers identified in
4 plaintiffs' infringement notices, correct?

5 A. Yes, I believe that's correct, if I followed that right.

6 Q. For a limited time frame, for 2012 to 2014, right?

7 A. Yes. 2012, 2013, 2014 were included. This will show
8 actions taken on any copyother tickets for those customers. If
9 they're one of the customers that received an RIAA notice
05:19:29 10 during the February 2013 to November 2014, for that set of
11 customers, we gathered the slightly longer timeline of 2012,
12 2013, 2014, and gathered all of the copyother tickets,
13 regardless of where those complaints may have sourced from as
14 long as they were one of these customers in the set.

15 This is showing all of the action events from those
16 tickets.

17 Q. That's helpful, thank you.

18 I want to make sure that everyone -- that I
19 understood it and everybody understood it. You started with
05:20:02 20 the 57,000 subscribers that received copyright infringement
21 notices from plaintiffs, correct?

22 A. Yes.

23 Q. And then you looked for every copyright infringement
24 notice about those customers for the period of 2012 to 2014,
25 correct?

1 A. I believe so, yes. That sounds right.

2 Q. So we get a, kind of a three-year snapshot of infringement
3 tickets?

4 A. Yes.

5 Q. And it's been talked about a bit here. Infringement
6 tickets and infringement notices aren't the same thing.

7 A. No. Not exactly, no.

8 Q. And, in fact, a number of notices may roll up into a
9 single ticket, correct?

05:20:43 10 A. That is possible, yes, under certain conditions.

11 Q. So we may know the number of copyright infringement
12 tickets in this three-year period, but we don't from that data
13 know the number of copyright infringement notices about those
14 customers, correct?

15 A. That is a distinction, yes.

16 Q. And the ticket data doesn't include any information at all
17 about the infringement history of these customers prior to
18 2012, correct?

19 A. Say that part again, if you would?

05:21:09 20 Q. The PX 19 ticket data doesn't tell us anything about the
21 infringement ticket history of these customers prior to 2012,
22 correct?

23 A. It is geared to 2012, 2013, 2014.

24 Q. And by the same token, it doesn't tell us anything about
25 their infringement history after 2014?

1 A. Right. 2012, 2013, 2014.

2 Q. And just in this limited time frame, do you recall that
3 there were approximately 315,000 tickets in this document?

4 A. That sounds -- that matches what I recall, yes.

5 Q. You've reviewed this. You remember it. That sounds about
6 right?

7 A. Yeah. 315,000 tickets in here.

8 Q. Now, if we look at column H in the ticket data, it's a
9 column called "Action." Do you see that?

05:22:02 10 A. Um-hum.

11 Q. And we can filter it in different ways to figure out how
12 many, how many times Cox took different kinds of actions,
13 correct?

14 A. That column does show what the action was taken.

15 Q. For example, we could filter on column H for sent reply.

16 Why don't we do that, Mr. Duval. Sent reply. There
17 you go.

18 And you see on the bottom left, there's a number
19 there that tells you how many records came up after you
05:22:46 20 filtered in that way?

21 A. I see.

22 Q. And what's that number? What's that number, sir?

23 A. The number showing here is roughly 48,000.

24 Q. So 48,018, is that correct?

25 A. Yep, out of the 570,000-plus total.

1 Q. But that's out of 315,000 tickets, right?

2 A. Yes. 570,000 is the count of the number of actions, and a
3 given ticket could have multiple action entries.

4 Q. Sometimes a ticket has multiple entries because it might
5 say sent a reply for one entry and then closed the ticket on
6 another entry?

7 A. That is correct. That is one possible.

8 Q. So in order to understand the number of actions taken out
9 of the number of tickets, we really want to look at it out of a
05:23:32 10 function of 315,000, correct?

11 A. Possibly. It depends on what we're looking at.

12 Q. Let's do that. So we have 48,000 instances of sent reply
13 out of these 315,000 tickets. Now, "sent reply" is the
14 language that Cox and CATS uses typically when CATS receives an
15 e-mail that exceeds a given sender's hard cap limit, correct?

16 A. Depends on the action content form here.

17 Q. And you see on the action content form in column I, they
18 all look like hard limit complaints?

19 A. For this particular page, yes.

05:24:09 20 Q. I think there might be a couple of other ones, but let's,
21 let's do this: Let's unselect and just select hard limit
22 complaints. So for all of those hard limit complaints, it's
23 46,997?

24 A. Yes.

25 Q. Okay. So just about 47,000 times that Cox sent a hard

1 limit reply to a sender. Am I correct, sir, that means that
2 Cox sent an e-mail back to whoever sent it, closed the ticket,
3 and did nothing as to the customer?

4 A. I can't say that we did nothing, but yes, we did not take
5 a customer facing notification at that time.

6 Q. So you took no customer facing notification.

7 A. Correct.

8 Q. Didn't send the customer a warning for those 47,000,
9 correct?

05:24:53 10 A. No, but it will serve as their first step in our graduated
11 response program if they haven't received any other complaints.

12 Q. So this might replace the ignore hold for all?

13 A. The hold for more, yes.

14 Q. So this might replace the ignore hold for more, but other
15 than that exception, this doesn't bump them up in the graduated
16 response step, correct?

17 A. No. It can take the place of the hold for more, but
18 there's no additional customer facing action on those.

19 Q. This would not give the customer a warning e-mail, would
05:25:25 20 it?

21 A. No.

22 Q. They wouldn't be suspended based on this, right?

23 A. No. That would be a customer facing.

24 Q. There would be no customer call, correct?

25 A. That would be customer facing action.

1 Q. There would be no suspension?

2 A. Also customer facing action.

3 Q. And no termination?

4 A. That would be very much a customer facing action.

5 Q. And as for the graduated response, I want to make sure I
6 understand how that works. So ordinarily, when CATS receives a
7 notice that it takes a customer facing action, it might bump up
8 the customer in the graduated response, correct?

9 A. Conversationally speaking, yes.

05:25:54 10 Q. Conversationally speaking. That's -- that works for me.

11 Say a customer is on their fifth ticket under the
12 graduated response and then they get their sixth ticket.
13 Ordinarily if it it's a notice -- if it's a ticket that Cox
14 processes and recognized, it would bump that customer up to the
15 sixth step, correct?

16 A. Yes.

17 Q. Okay. But if it's a hard limit reply, that customer just
18 stays at the fifth?

19 A. Yes.

05:26:20 20 Q. They essentially get a free pass on the graduated
21 response, don't they?

22 A. I don't know that I would call it a free pass. The
23 complainant can resend the complaint at a later time if they
24 have a lower volume spot.

25 Q. Can we pull up -- actually in your binder, please, take a

1 look at 310, PX 310, tab 10. PX 310.

2 Mr. Beck, this is a two-page e-mail that you're
3 included on. Let me know if you can -- if you recognize that,
4 sir.

5 A. Okay. Give me just a moment to review.

6 Q. Sure.

7 A. Okay.

8 MR. GOULD: I'd move to admit PX 310.

9 THE COURT: Any objection?

05:27:43 10 MS. GOLINVEAUX: No objection, Your Honor.

11 THE COURT: It's received.

12 MR. GOULD: So if we pull that up and start at the
13 second page, please, just zoom in on the whole e-mail, if you
14 could.

15 MR. GOULD:

16 Q. So, Mr. Beck, here you're sending an e-mail to the
17 corporate abuse and data ops - CATS teams, and the subject is
18 High Complaint volume for Universal Studios, correct?

19 A. Yes.

05:28:05 20 Q. And you say: We have a "hard limit" of 200/day applied
21 for Universal's complaints to us, but we're seeing quite a bit
22 more than that coming in. In general it isn't a big deal
23 really (we create closed tickets once the limit is exceeded
24 each day), but this complainant in particular has had daily
25 complaint volumes as high as 3,700+ lately. Does that seem

1 excessive to you?

2 Do I read that correctly?

3 A. I believe so, if I followed along correctly.

4 Q. I'm sorry, I didn't hear that.

5 A. I said I believe so, if I followed along correctly.

6 Q. And what's happening here, Mr. Beck, is you're explaining
7 that Universal Studios is sending a great deal of copyright
8 infringement notices above its 200 per day cap, correct?

9 A. Yes, above what it -- if I'm reading and remember this
05:28:51 10 right, it's probably a statement that their current volume may
11 be higher than it's been in the past, so it's basically a
12 pattern change, something that catches our eye.

13 Q. And as to the particular content, the point is that
14 they're well over the 200 per day cap?

15 A. Yes.

16 Q. And you say it's no big deal because you just close the
17 tickets, right?

18 A. Those are the words here, yes.

19 Q. But what you mean there, Mr. Beck, is it's no big deal for
05:29:22 20 Cox; isn't that right?

21 A. No, it's not. What I'm saying here is that it's not --

22 Q. Mr. Beck --

23 THE COURT: Let him finish. Let him finish the
24 answer.

25 THE WITNESS: I was basically just saying that when I

1 say it's not a big deal here, I'm saying it's not causing,
2 like, a system-impacting issue. It's not causing a degradation
3 of CATS' ability to handle notices and such.

4 BY MR. GOULD:

5 Q. It's not causing a big deal for Cox's computer systems?

6 A. For the CATS platform.

7 Q. It's not causing a big deal for CATS?

8 A. Correct.

05:29:58 9 Q. You certainly don't mean that it's no big deal for the
10 copyright owner?

11 A. No, that's not the implication here. This is about system
12 availability.

13 Q. And those 3,500 notices above Universal Studios' cap
14 ordinarily might trigger a hard limit reply like we saw if
15 there was an e-mail address to send to, right?

16 A. Yes.

17 Q. But if you look down at this chart on the bottom, do you
18 see that the complainant has a reply address that says no
19 reply?

05:30:25 20 A. Yes.

21 Q. And doesn't that mean, sir, that CATS doesn't send a reply
22 to them?

23 A. Yes, that's correct. We assume it would bounce, that it's
24 not a serviceable address.

25 Q. So in this case, Cox and CATS not only takes no customer

1 facing action; it also takes no action as to the complainant;
2 isn't that right?

3 A. The complainant hasn't given us a valid way to reach them
4 for these.

5 Q. And you asked the abuse team whether this seems excessive?

6 A. Those were the words, yes.

7 Q. And on the next page, Mr. Sikes replies and says: Yes,
8 this does seem a bit excessive?

9 A. Yes.

05:31:07 10 Q. Mr. Beck, is it excessive to report massive theft or to
11 ignore notice of it?

12 A. I think I alluded to it earlier, when I said excessive, I
13 think I meant that does this seem like an unusually high volume
14 compared to what we've normally received from them.

15 Q. Now, I want to turn back to the ticket data, PX 19.
16 Actually, one of the fields -- one of the fields in the ticket
17 data is sent warning, correct?

18 A. That is one of the actions, yes.

19 Q. And we could figure out the number of warnings sent to
05:31:49 20 those customers, correct?

21 A. Yes.

22 Q. Now, I want to pull up a document that I'm going to call
23 PX 32A, which is not in your binder. It's the first of the
24 compilation of warning e-mails that Cox sent to its customers,
25 and I have one open for you to look at because I did not plan

1 ahead on this one. I apologize.

2 Mr. Beck, you're familiar with the e-mail warnings
3 that Cox sends to its customers, correct?

4 A. Yes, generally.

5 Q. You've seen those before?

6 A. Um-hum, yes.

7 MR. GOULD: PX 32A is a single one of those warnings,
8 and I move to admit PX 32A.

9 THE COURT: Any objection?

05:32:39 10 MS. GOLINVEAUX: No objection, Your Honor.

11 THE COURT: All right. It's received.

12 MR. GOULD: If you could pull up PX 32A.

13 BY MR. GOULD:

14 Q. Now, Mr. Beck, this is an example of one of the warning
15 e-mails that CATS sends to customers, correct?

16 A. It does appear to be so, yes.

17 Q. And this message is to advise that Cox has received a
18 notice of infringement. And I want to look at the second
19 paragraph -- actually, the third paragraph. Let's blow that
05:33:20 20 up.

21 In the third paragraph, Cox says to its customers:
22 As an internet provider, Cox is responsible under the Digital
23 Millennium Copyright Act, DMCA, to advise when we receive a
24 notice asserting infringement by you. We are also required to
25 take appropriate action if further claims are received that you

1 do not resolve.

2 Did I read that correctly?

3 A. If I followed along, yes.

4 Q. Now, we just looked at a number of categories of instances
5 where Cox actually doesn't advise a customer when it receives a
6 notice asserting infringement, didn't we?

7 A. Can you repeat? I'm sorry?

8 Q. We just looked at a number of categories of, categories of
9 procedures where Cox actually doesn't advise the customer when
05:34:16 10 it receives an infringement allegation against them; isn't that
11 right?

12 A. For various different reasons, yes.

13 Q. Yeah. We talked about hard limits, right?

14 A. Hard limits, yes.

15 Q. We talked about two kinds of blacklists, right?

16 A. Yeah. The blacklists, we would believe something to be
17 improper with the complaint.

18 Q. And we talked about how multiple notices might roll up
19 into a single ticket?

05:34:40 20 A. Yes.

21 Q. So, in fact, Cox doesn't advise the customer when it
22 receives a notice asserting infringement by you in all cases;
23 isn't that right?

24 A. Not every single notice will be passed directly to the
25 customer.

1 Q. One of the other things we can look at in the ticket
2 action data is how many times that CATS suspended a customer
3 and reactivated a customer, correct?

4 A. Yes. We should be able to see those actions.

5 Q. And you would agree Cox had the ability to suspend
6 customers' internet service, correct?

7 A. Generally, yes.

8 Q. And when Cox suspends a customer in response to copyright
9 infringement complaints, that restricts the customer's ability
05:35:25 10 to use Cox's internet service, correct?

11 A. During the time of the suspension, it will, yes.

12 Q. And during the time of the suspension, a customer, a Cox
13 customer can't use peer-to-peer programs through Cox's network,
14 correct?

15 A. Correct.

16 Q. And likewise, during a suspension, a Cox customer can't
17 infringe plaintiffs' copyrights through Cox's network, correct?

18 A. I can't imagine how, no.

19 Q. And when Cox reactivates a customer who was suspended,
05:35:54 20 that customer regains access -- regains the ability to use
21 Cox's internet service, correct?

22 A. Yes. That restores the internet connectivity.

23 Q. I'm sorry, I didn't hear you.

24 A. Reactivation does restore the internet connectivity, yes.

25 Q. And that would include the ability to use Cox's internet

1 service to infringe if they wanted to, correct?

2 A. It restores their connectivity to the internet.

3 Q. They can do whatever they want on it?

4 A. That's as much as I can say, yes.

5 Q. And, in fact, the CATS data also shows the, the time
6 differential between the suspension and activation, too. We
7 could look at that, right?

8 A. Sure.

9 Q. In the ticket data, you can also see the number of
05:36:40 10 terminations of the 57,000 customers, correct?

11 A. Yes. Termination would be one of the actions that would
12 show.

13 Q. And a terminated customer indicates that a customer's data
14 service has been cut off, correct?

15 A. Yes. They're off the internet.

16 MR. GOULD: If I could look at PX 19, and filter
17 column H for a terminated customer, please.

18 Q. Do you see, Mr. Beck, in the three-year period of all
19 copyright infringement tickets for the 57,000 customers, that
05:37:27 20 Cox terminated 13 of those customers?

21 A. Yes. Thirteen of the customers that received RIAA notices
22 during that time frame.

23 Q. Thirteen terminations of the 57,000 customers who received
24 plaintiffs' RIAA notices?

25 A. Yes.

1 Q. And you would agree, sir, that Cox had the ability to
2 terminate customers' service?

3 A. We have terminations listed here.

4 Q. And so you would agree Cox had the ability to terminate
5 customers' service, correct?

6 A. That is a given. If the actions occurred, then we had the
7 ability.

8 Q. And when Cox terminates a customer's internet service,
9 that restricts the customer's ability to use Cox's internet
10 service?

05:38:14

11 A. Yes. When they're terminated, they're off the internet.

12 Q. And likewise, after a customer's internet service is
13 terminated, that customer can't use peer-to-peer programs
14 through Cox's network, correct?

15 A. They should not have network connectivity if data services
16 are terminated.

17 Q. And similarly, after a customer's internet service is
18 terminated, that customer can't infringe plaintiffs' copyrights
19 through Cox's network, correct?

05:38:37

20 A. They should not be able to unless they are finding some
21 other inappropriate way to connect to our network.

22 Q. To your knowledge, the answer would be no, they can't do
23 it?

24 A. No. Not practically, no.

25 Q. Now, I want to talk a little bit about what happens at

1 termination. If we could pull up PX 292 -- actually, don't
2 pull it up yet, please -- tab 9 in your binder, please.

3 Do you recognize this, Mr. Beck?

4 A. Okay. Yes.

5 MR. GOULD: I move to admit PX 292.

6 THE COURT: Any objection?

7 MS. GOLINVEAUX: No objection, Your Honor.

8 THE COURT: It's received.

9 BY MR. GOULD:

05:39:41 10 Q. Mr. Beck, PX 292 is a chat log between you and a gentleman
11 named Harry Spriggs from Monday, August 22, 2011, correct?

12 A. Yes, that's correct.

13 Q. And Mr. Spriggs, you believe, was a Tier 2.5 tech at the
14 time?

15 A. If I remember correctly.

16 Q. And in the first few lines, you appear to be asking
17 Mr. Spriggs a process question about what happens to the actual
18 service and modem at termination. Do you see that?

19 A. Yes, I see.

05:40:15 20 Q. That's the third line.

21 And then Mr. Spriggs replies -- let's call up
22 Mr. Spriggs' reply, please. I guess it doesn't get us much
23 bigger, does it?

24 Mr. Spriggs replies and says: The same as what
25 happens with a regular suspension. It used to be that we

1 completely removed all HSI -- high-speed internet services --
2 but since so many of them were just getting reactivated again
3 the next day, and because it's such a huge pain to re-add
4 services once they've been removed, Jason gave us the go-ahead
5 to just use the AUP and call it a termination.

6 Did I read that correctly?

7 A. If I followed along, yes.

8 Q. And you understand Jason refers to Mr. Zabek?

9 A. That would be my assumption.

05:41:05 10 Q. And when he uses the phrase "just use the AUP and call it
11 a termination," "AUP" here means suspend, doesn't it?

12 A. Yeah, it's the -- that's a term that falls somewhere in
13 the technical aspects of suspending, so, yes, that's a
14 reference to suspension.

15 Q. And you reply: Okay. And talk a little bit about CATS.

16 And then moving down, Mr. Spriggs replies again, and
17 let's take a look at Mr. Spriggs' reply. Mr. Spriggs says: I
18 see what you mean. It's been kind of a "semi-official"
19 procedure change, mostly to make things easier on us. Whatever
05:41:48 20 you can do with it, I know we'd all appreciate it.

21 Do you recall this semi-official procedure change?

22 A. Say again? I'm sorry?

23 Q. Do you recall this semi-official procedure change?

24 A. Other than what I'm reading, not particularly. The
25 procedures for termination, though, wouldn't really involve me.

1 Q. If you could turn to tab 13 in your binder, please.

2 Do you recognize this similar-looking but different
3 document that we looked at earlier?

4 THE COURT: How much more do you have?

5 MR. GOULD: I've got a bit.

6 THE COURT: Meaning?

7 MR. GOULD: Mindful of the time, if you'd like to
8 break, I can begin this section tomorrow. I've got a bit after
9 it as well.

05:43:31 10 THE COURT: So you've got more than ten minutes
11 and -- well, you have cross-examination that's going to go on
12 for a while, I would imagine, further examination.

13 MS. GOLINVEAUX: Yes, Your Honor.

14 THE COURT: Okay. All right. We could continue, but
15 it's quarter to six. Are you-all ready to go home for the day?
16 Does that make sense to you-all? Okay.

17 All right. Let's break for tonight, and we'll come
18 back at 9:00 tomorrow morning. And again, please, no research,
19 no investigation, no talking to anybody about the case. Thank
05:44:09 20 you for your time today, and we'll see you tomorrow at 9:00.
21 All right. You're excused.

22 NOTE: At this point, the jury leaves the courtroom;
23 whereupon, the case continues as follows:

24 JURY OUT

25 THE COURT: All right. Mr. Beck, you're excused at

1 this time. We'll see you tomorrow at 9:00. Please don't
2 discuss the testimony you've given so far with anybody until
3 you return tomorrow. All right, sir?

4 THE WITNESS: Okay. Thank you very much.

5 THE COURT: All right. Have a good evening. You're
6 excused at this time.

7 WITNESS STOOD DOWN

8 THE COURT: You wanted to identify some exhibits from
9 the deposition exhibit?

05:45:12 10 MR. GOULD: I think it's probably the moment
11 everyone's been waiting for. We would move into the record
12 based on the Zabek deposition designation PX 429, PX 318,
13 PX 258, PX 264, PX 347, PX 282, PX 253, PX 262, PX 287, PX 245,
14 PX 266, PX 277, PX 316, PX 252, PX 337, PX 235, PX 296, PX 236,
15 PX 237, PX 242, PX 197, PX 278, PX 324, PX 298, PX 325, and
16 PX 312.

17 MR. ELKIN: No objection, Your Honor.

18 THE COURT: All right. Thank you. They're received.
19 Did you get them all? All right.

05:46:23 20 Okay. Anything we need to discuss before we return
21 tomorrow at 9 a.m.?

22 MR. ELKIN: No, Your Honor.

23 MR. OPPENHEIM: Not from plaintiffs, Your Honor.

24 THE COURT: All right. All right, then we're in
25 recess. We'll see you tomorrow at 9:00.

1 NOTE: At this point, the December 9, 2019, portion
2 of the case is concluded.

3
4
5
6 CERTIFICATE OF COURT REPORTERS
7
8
9
10

11 We certify that the foregoing is a true and
12 accurate transcription of our stenographic notes.
13
14
15

16 /s/ Norman B. Linnell
17 _____
Norman B. Linnell, RPR, CM, VCE, FCRR
18

19 /s/ Anneliese J. Thomson
20 _____
Anneliese J. Thomson, RDR, CRR
21
22
23
24
25